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# Border Security: Immigration Inspections at Ports of Entry

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## Summary

About 362 million travelers (citizens and non-citizens) entered the United States in FY2013, including about 102 million air passengers and crew, 18 million sea passengers and crew, and 242 million land travelers. At the same time about 205,000 aliens were denied admission at ports of entry (POEs); and about 24,000 persons were arrested at POEs on criminal warrants.

Within the Department of Homeland Security (DHS), U.S. Customs and Border Protection's (CBP) Office of Field Operations (OFO) is responsible for conducting immigration inspections at America's 329 POEs. CBP's primary immigration enforcement mission at ports of entry is to confirm that travelers are eligible to enter the United States and to exclude inadmissible aliens. Yet strict enforcement is in tension with a second core mission: to facilitate the flow of lawful travelers, who are the vast majority of persons seeking admission. A fundamental question for Congress and DHS is how to balance these competing concerns.

In general, DHS and CBP rely on “risk management” to strike this balance. One part of the risk management strategy is to conduct screening at multiple points in the immigration process, beginning well before travelers arrive at U.S. POEs. DHS and other departments involved in the inspections process use a number of screening tools to distinguish between known, low-risk travelers and lesser-known, higher-risk travelers. Low-risk travelers may be eligible for expedited admissions processing, while higher-risk travelers are usually subject to more extensive secondary inspections.

As part of its dual mission and in support of its broader mandate to manage the U.S. immigration system, DHS also is responsible for implementing an electronic entry-exit system at POEs. Congress required DHS' predecessor to develop an entry-exit system beginning in 1996, but the implementation of a fully automated, biometric system has proven to be an elusive goal. The current system collects and stores *biographic* entry data (e.g., name, date of birth, travel history) from almost all non-citizens entering the United States, but only collects *biometric* data (e.g., fingerprints and digital photographs) from non-citizens entering at air or seaports, and from a subset of land travelers that excludes most Mexican and Canadian visitors. With respect to exit data, the current system relies on information sharing agreements with air and sea carriers and with Canada to collect *biographic* data from air and sea travelers and from certain non-citizens exiting through northern border land ports; but the system does not collect data from persons exiting by southern border land ports and does not collect any *biometric* exit data. Questions also have been raised about DHS' ability to use existing entry-exit data to identify and apprehend visa overstayers.

The inspections process and entry-exit system continued to be perennial issues for Congress and a number of questions persist, including in the context of the ongoing debate about immigration reform and in the context of screening for infectious diseases at POEs due to heightened concerns about the health screening of people arriving in the United States from the Ebola infected areas in West Africa. What is the scope of illegal migration through ports of entry, and how can Congress and DHS minimize illegal flows without unduly slowing legal travel? The 113<sup>th</sup> Congress considered steps to enhance POE personnel and infrastructure, primarily through the appropriations process. The 113<sup>th</sup> Congress passed legislation that required the completion of the entry-exit system, a program that has been the subject of ongoing legislative activity since 1996, as summarized in the **Appendix** to this report.

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## Introduction

About 362 million travelers (citizens and non-citizens) entered the United States in FY2013, including about 102 million air passengers and crew, 18 million sea passengers and crew, and 242 million incoming land travelers. At the same time about 205,000 aliens were denied admission at ports of entry (POEs); and about 24,000 persons were arrested at POEs on outstanding criminal warrants.<sup>1</sup>

Within the Department of Homeland Security (DHS), U.S. Customs and Border Protection's (CBP) Office of Field Operations (OFO) is responsible for conducting immigration inspections at America's 329 POEs. About 21,464 CBP officers inspect travelers, agricultural products, and cargo at U.S. ports and abroad.<sup>2</sup> Most foreign nationals visiting the United States also are subject to some form of screening prior to their arrival at a POE, including when they apply for a nonimmigrant visa or to enter through the Visa Waiver Program,<sup>3</sup> and through CBP's screening of information provided by air and sea carriers.

CBP's primary immigration enforcement mission at ports of entry is to confirm that travelers are eligible to enter the United States and to exclude inadmissible aliens.<sup>4</sup> This mission is challenging because of the scope and complexity of immigration inflows: millions of travelers at hundreds of ports must be individually screened against dozens of rules governing who may or may not enter the country. Moreover, strict enforcement is in tension with a second core mission: to facilitate the flow of lawful travelers, who are the vast majority of persons seeking admission. A fundamental question for Congress and DHS is how to balance these competing concerns. The answer to this question varies across diverse geographic regions, different modes of travel, and in response to a constantly shifting landscape of potential threats and legal immigration flows.

As part of this dual mission, and in support of its broader mandate to manage the U.S. immigration system, DHS also is responsible for implementing an electronic entry-exit system at POEs. Congress required DHS' predecessor to develop an entry-exit system beginning in 1996,<sup>5</sup> but the implementation of a fully automated, biometric system has proven to be an elusive goal.

This report reviews the legislative history of immigration inspections requirements and the entry-exit system. The report then describes the implementation of these provisions, including pre-travel screening, primary and secondary inspections, trusted traveler programs, outbound

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<sup>1</sup> Congressional Research Service (CRS) calculations based on data provided by U.S. Customs and Border Protection (CBP) Office of Legislative Affairs, December 30, 2013.

<sup>2</sup> Most CBP officers are based in the United States; some conduct immigration and cargo inspections abroad through partnership agreements with other countries. See in this report "Preclearance"; also see CRS Report R43014, *U.S. Customs and Border Protection: Trade Facilitation, Enforcement, and Security*.

<sup>3</sup> The Visa Waiver Program (VWP) allows nationals from certain countries to enter the United States as temporary visitors for business or pleasure *without* obtaining a visa from a U.S. consulate abroad; see in this report "Visa Waiver Program."

<sup>4</sup> "Aliens" is synonymous with non-citizens, including legal permanent residents, temporary nonimmigrants, and unauthorized aliens. Inadmissible aliens are aliens who are not permitted to enter the United States. Aliens may also be referred to as "foreign nationals."

<sup>5</sup> Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA, P.L. 104-208, Div. C), as amended; see in this report "Entry-Exit System: Legislative Requirements."

enforcement, and the entry-exit system. The final section of the report identifies a number of issues for Congress related to immigration admissions and enforcement at POEs.

## Immigration Inspections: Policy Goals

Controlling admissions is a core element of state sovereignty; but such control entails the opposing goals of: 1) preventing unlawful entries, while 2) facilitating legal flows. These policy goals are inherently in tension, as efforts to identify and interdict illegal entrants inevitably challenges, and may delay, the smooth flow of legitimate travelers.<sup>6</sup>

The Supreme Court has long held that Congress has absolute authority to control immigration by establishing rules for the admission, exclusion, and deportation of non-citizens.<sup>7</sup> Some of the first federal laws, the so-called Aliens and Seditions Acts of 1798, authorized the president to arrest and/or deport any alien who represented a danger to the United States.<sup>8</sup> And while Congress during most of the 19<sup>th</sup> century generally favored open admissions to the sparsely populated country, a series of laws beginning in 1875 excluded several classes of aliens, including criminals and prostitutes,<sup>9</sup> aliens from certain countries and regions,<sup>10</sup> anarchists,<sup>11</sup> communists,<sup>12</sup> and aliens engaged in espionage,<sup>13</sup> among others.

Thus, while the specific issues in U.S. immigration law have evolved over time, a core policy goal has always been to *prevent the entry of aliens who threaten U.S. interests*. For the last several decades, these threats, or enforcement priorities, have fallen within three broad categories:<sup>14</sup>

- **Unauthorized immigration.** Since 1980, the estimated unauthorized population in the United States has increased from about 2.5 million to about 11.7 million people.<sup>15</sup> Between one-third and one-half of these aliens are believed to have

<sup>6</sup> A similar tension exists with respect to cargo imports, which are beyond the scope of this report. See CRS Report R43014, *U.S. Customs and Border Protection: Trade Facilitation, Enforcement, and Security*.

<sup>7</sup> *Chae Chan Ping v. United States*, 130 U.S. 581, 9 S.Ct. 623. For a fuller discussion, see Thomas Alexander Aleinikoff, David A. Martin, and Hiroshi Mormura, et al., *Immigration and Citizenship: Process and Policy* (St. Paul, MN: West Law, 2012), pp. 191-192.

<sup>8</sup> Aliens Act of July 6, 1798 (1 Stat. 566).

<sup>9</sup> Act of March 3, 1875 (18 Stat. 477). Provisions to exclude certain criminals, including aliens convicted of “crimes of moral turpitude” remain on the books under INA §212(a)(2). See CRS Report R41104, *Immigration Visa Issuances and Grounds for Exclusion: Policy and Trends*.

<sup>10</sup> The Chinese Exclusion Act of 1882 (22 Stat. 58) suspended immigration of Chinese laborers to the United States for 10 years; subsequent legislation made the ban permanent and eventually expanded it to the entire “Asia-Pacific triangle” (Immigration Act of 1917; 39 Stat. 874). The Quota Law of 1921 (42 Stat. 5) and the Immigration Act of 1924 (43 Stat. 153) established the “national origins quota system,” which eventually set annual immigration quotas for the Eastern Hemisphere to match the ethnic demographics of the U.S. census of 1920.

<sup>11</sup> Immigration Act of March 3, 1903 (32 Stat. 1213).

<sup>12</sup> Internal Security Act of 1950 (64 Stat. 464).

<sup>13</sup> Immigration and Nationality Act (INA) of 1952 (P.L. 82-414; 66 Stat. 163).

<sup>14</sup> For a fuller discussion of threats at U.S. borders see CRS Report R42969, *Border Security: Understanding Threats at U.S. Borders*.

<sup>15</sup> CRS Report RL33874, *Unauthorized Aliens Residing in the United States: Estimates Since 1986*, by Ruth Ellen Wasem, *Population Decline of Unauthorized Immigrants Stalls, May Have Reversed*, Pew Research Center, Washington, DC, September 23, 2013.

entered lawfully through a POE and over-stayed their visas.<sup>16</sup> An unknown proportion of illegal entrants also passed through POEs, either concealed in a vehicle or by using fraudulent documents. One enforcement priority at POEs, therefore, is to prevent these unlawful entries.

- **Transnational crime.** CBP officers performing immigration inspections are the primary line of defense against certain illegal flows, including in particular most illegal drug flows other than marijuana.<sup>17</sup> Immigration inspectors also seek to arrest known smugglers and other criminals at POEs.
- **International terrorism.** National security concerns have loomed large in immigration policy in the years since the 2001 Al Qaeda attacks against the United States (the 9/11 attacks). All 19 of the 9/11 hijackers entered the United States *legally* through POEs, and constraining terrorist travel is now recognized as a critical defense against terrorist attacks within the United States.<sup>18</sup>

Yet while most people would agree that terrorists, criminals, and immigration violators are appropriate enforcement targets, no consensus exists about how to *prioritize* these threats because the likelihood of each type of illegal entry is unknown, and because the potential consequences of these threats are subjective and difficult to measure. The likelihood of each of these threats occurring also varies by geography and mode of entry. For example, certain types of illegal migrants may be more likely to travel by bus or car across the southern border, smugglers may favor other distribution routes, and terrorists may be likely to reach the United States by air and/or at northern border POEs. Threat actors also may seek to counter enforcement efforts by adapting their behavior to avoid such patterns.<sup>19</sup>

Enforcement must be balanced by a second overarching goal: the facilitation of legal flows. With international tourism directly accounting for over \$200 billion in 2012 (almost 1% of U.S. gross domestic product),<sup>20</sup> travel facilitation supports the U.S. economy. Smooth processing at POEs also streamlines travel for the tens of millions of U.S. citizens returning from international trips each year, and may improve Americans' experiences abroad through reciprocal arrangements. In addition, immigration agents at POEs define visitors' first impressions of America and the U.S. government, and therefore play an important diplomatic role.

Enforcement and travel facilitation are fundamentally in tension because efforts to identify and interdict unlawful travelers tend to impede the flow of the entire admissions queue, and efforts to expedite the line may increase the risk that an illicit traveler is overlooked. Thus, in addition to

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<sup>16</sup> CRS Report RS22446, *Nonimmigrant Overstays: Brief Synthesis of the Issue*.

<sup>17</sup> Most cocaine, heroin, and methamphetamines smuggled into the United States enter through ports of entry in private, non-commercial vehicles (i.e., are admitted during immigration processing, rather than as cargo imports); most smuggled marijuana (along with certain other types of contraband) is hidden within legal commercial loads (i.e., enters through the customs process) or is smuggled between ports of entry. See U.S. Department of Justice, National Drug Intelligence Center, *National Drug Threat Assessment: 2011*, Washington, DC, 2011, p. 13.

<sup>18</sup> U.S. National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report: Final Report* (Washington: GPO, 2004). Hereafter: *9/11 Commission Report*.

<sup>19</sup> For a fuller discussion of threats at U.S. borders see CRS Report R42969, *Border Security: Understanding Threats at U.S. Borders*.

<sup>20</sup> World Bank, "International tourism, receipts," <http://data.worldbank.org/indicator/ST.INT.RCPT.CD>. This figure understates the full economic impact of international tourism since it does not account for certain non-travel and tourism goods purchased by international travelers.

questions about how to *prioritize* diverse threats, Congress and DHS must decide how to *balance* enforcement and the facilitation of legitimate travel. Is it better to admit one illegal actor, or to delay the admission of 1,000 lawful travelers? How should Congress and DHS weigh the benefits of more robust enforcement against the costs to commerce, privacy and civil liberties, and related concerns?

In an effort to reduce border wait times without compromising border security, CBP's response to these questions emphasizes "risk management." In general, risk management refers to a process for assessing the risks associated with potential threats and calibrating the enforcement response to the estimated gravity of the threat.<sup>21</sup> In the case of immigration inspections, risk management involves screening travelers at multiple points in the immigration process to distinguish between low- and high-risk travelers. Low-risk travelers may be eligible for expedited admissions processing through the Visa Waiver Program and/or trusted traveler programs, while higher-risk travelers may be subject to more extensive secondary inspections. Unauthorized migrants at POEs may be subject to expedited removal and other types of immigration enforcement (see "The Immigration Inspections Process").

## Legislative History

### Inspections for Admission

The procedures governing inspections of persons applying for admission are described in 8 C.F.R. Section 235, which derives its authority from Sections 101, 103, 215, 221, and 235 of the Immigration and National Act of 1952 (INA, P.L. 82-414), as amended. Under INA §215, in particular, both aliens and citizens are required to present appropriate entry documents, except as otherwise ordered by the president; and (pursuant to 8 C.F.R. §235.1) to enter through designated ports of entry.<sup>22</sup> INA §211 spells out additional documentary requirements for immigrant admissions. And INA §287 authorizes immigration officers, among other powers and pursuant to regulations, to interrogate any person believed to be an alien as to the person's right to enter or remain in the United States, and to arrest any alien attempting to enter the United States unlawfully.<sup>23</sup>

Prior to 2002, INA §103 made the Attorney General responsible for controlling U.S. borders and enforcing these laws. Pursuant to §§401- 403 of the Homeland Security Act of 2002 (HSA, P.L. 107-296), these responsibilities were transferred to DHS.<sup>24</sup> The INA also authorizes the consular

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<sup>21</sup> For a fuller discussion, see CRS Report R42969, *Border Security: Understanding Threats at U.S. Borders*.

<sup>22</sup> Pursuant to INA §235A, added by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA, P.L. 104-208, Div. C), preinspection stations are maintained at certain foreign airports, including airports identified as top points of departure for inadmissible aliens arriving at U.S. POEs. The United States implemented preinspection services at certain Canadian airports beginning in 1952; for a fuller discussion of preinspection services see, in this report, "Preclearance."

<sup>23</sup> Pursuant to 8 C.F.R. §235.1(b), a person claiming U.S. citizenship must establish that fact to the satisfaction of the inspecting officer, including by presenting a U.S. passport or other acceptable document; and a person who fails to meet these requirements is presumed for purposes of inspection for admission to be an alien.

<sup>24</sup> Sections 401-403 of the Homeland Security Act (P.L. 107-296) also transferred to the Department of Homeland Security (DHS) the duties of the U.S. Customs Service, and the Office of Field Operations (OFO) within CBP also is responsible for cargo inspections at ports of entry (POE). For a fuller discussion, see CRS Report R43014, *U.S. Customs and Border Protection: Trade Facilitation, Enforcement, and Security*.

processing system as part of the visa issuance process, giving State Department consular officers sole authority to issue visas to aliens seeking admission to the United States.<sup>25</sup> Section 428 of the HSA charged DHS with issuing regulations on visa issuances and authorized DHS personnel abroad to advise consular officers and to review and investigate visa applications; but the HSA left the State Department in charge of actual visa issuance (also see “Consular Reviews”).<sup>26</sup>

Historically, U.S. citizens and most citizens of Canada and Bermuda entering the United States by land or sea from the Western Hemisphere were exempted from certain document requirements.<sup>27</sup> Following the 9/11 attacks, based on a recommendation by the National Commission on Terrorist Attacks upon the United States (the 9/11 Commission),<sup>28</sup> Section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA, P.L. 108-458) directed DHS, in consultation with the Department of State (DOS), to develop a plan to require a passport or other secure document(s) for all travel into the United States by U.S. citizens and others. The resulting plan, known as the Western Hemisphere Travel Initiative, requires adult land and sea travelers entering the United States from within the hemisphere to present a passport or other secure document.<sup>29</sup>

## Entry-Exit System: Legislative Requirements

Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA, P.L. 104-208, Div. C) required the Attorney General, within two years of enactment (i.e., by September 30, 1998), to develop an automated entry and exit control system that would collect records of alien arrivals and departures and allow the Attorney General through online searches to match such arrivals and departures and thereby identify nonimmigrant aliens who remain in the United States beyond the periods of their visas (i.e., visa overstayers). The bill also required the Attorney General to annually report to Congress on the number of visa overstayers and their countries of origin.

Congress has amended the system’s requirements and deadlines on several occasions since then, including by adding an entry-exit requirement to legislation authorizing the Visa Waiver Program and by requiring the entry-exit system to include biometric technology and to be fully interoperable with DOS and Department of Justice (DOJ) databases. See the **Appendix** for a full list of entry-exit legislation. Despite Congress’s ongoing attention, however, the entry-exit system remains incompletely implemented (see “Entry-Exit System: Implementation”).

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<sup>25</sup> INA §221, as amended; for a fuller discussion see CRS Report R41093, *Visa Security Policy: Roles of the Departments of State and Homeland Security*.

<sup>26</sup> *Ibid.*

<sup>27</sup> For a fuller discussion, see Department of Homeland Security, “Documents Required for Travelers Departing from or Arriving in the United States at Sea and Land Ports-of-Entry from within the Western Hemisphere,” 73 *Federal Register* 18384, April 3, 2008.

<sup>28</sup> 9/11 Commission Report.

<sup>29</sup> Acceptable documents include U.S. passport cards, enhanced driver’s licenses, trusted traveler cards, U.S. military identification card, U.S. Merchant Mariner document, and enhanced tribal documents. See see CBP, “Document Requirements for Land and Sea Travel.”

## Travel Facilitation

With the increased focus after 9/11 on national security during immigration screening, Congress has taken steps to ensure that DHS also focuses on travel facilitation. Section 302(b)(1) of the Enhanced Border Security and Visa Entry Reform Act of 2001 (EBSVERA, P.L. 107-173), for example, directed the departments to “utilize technologies that facilitate the lawful and efficient cross-border movement of commerce and persons without compromising the safety and security of the United States.” In addition, §7209(k) of the IRTPA described congressional findings that “expediting the travel of previously screened and known travelers across the borders of the United States should be a high priority,” including because it “can permit inspectors to better focus on terrorists attempting to enter the United States.” The section directs DHS to develop and implement a registered traveler program for this purpose (see “Trusted Traveler Programs”). IRTPA §7210 also amended INA §235A to require DHS to add 25 preinspection stations (up from 5 required under IIRIRA) and to locate such stations at locations that “would most effectively facilitate the travel of admissible aliens” in addition to reducing the arrival of inadmissible aliens, as in the original language (see “Preclearance”).

## The Immigration Inspections Process

Travelers seeking to enter the United States go through one to three steps in the immigration inspection process. In the first step, prior to travel, most travelers who are not U.S. citizens or legal permanent residents (LPRs)<sup>30</sup> must apply for permission to enter the United States, by obtaining a visa at a U.S. consulate abroad or through the Visa Waiver Program. Air travelers are subject to additional screening prior to arrival (see “Pre-Travel Screening”). Second, *all* arriving travelers are subject to inspection (or preclearance) by a CBP officer prior to entering the United States (see “Primary Inspections”). Third, some passengers also may be selected through risk-based screening or at random for more intensive scrutiny (see “Secondary Inspections and Immigration Enforcement”). Participants in CBP’s trusted traveler programs volunteer for additional screening in advance and thereby become eligible for expedited processing at POEs (see “Trusted Traveler Programs”).

### Pre-travel Screening

Most foreign nationals seeking to enter the United States must get permission to do so prior to travel, and are subject to pre-travel screening. With the exception of U.S. LPRs,<sup>31</sup> certain Canadian citizens,<sup>32</sup> and certain residents of Caribbean islands other than Cuba,<sup>33</sup> foreign

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<sup>30</sup> Legal permanent residents (LPRs) are foreign nationals who come to live lawfully and permanently in the United States; see CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*.

<sup>31</sup> Pursuant to 8 C.F.R. §211, LPRs seeking admission to the United States generally must present a valid, unexpired immigrant visa, permanent resident card (“green card”), or other proof of identity and permanent resident status.

<sup>32</sup> Pursuant to 8 C.F.R. §212.1, Canadian citizens generally are not required to obtain a visa to enter the United States except under certain circumstances. Certain Canadian citizens also may apply to enter the United States as NAFTA Professionals (with TN nonimmigrant status) at a U.S. port of entry.

<sup>33</sup> Pursuant to 8 C.F.R. §212.1, citizens of the British overseas territory of Bermuda are not required to obtain a visa to enter the United States except under certain circumstances; residents of other Caribbean islands may be exempted from visa requirements under certain, more narrow conditions.

nationals seeking admission to the United States must apply in advance for a nonimmigrant visa<sup>34</sup> at a U.S. consulate abroad (see “Consular Reviews”), or in certain cases through an on-line process for permission to participate in the U.S. Visa Waiver Program (see “Visa Waiver Program”). Air passengers are subject to further screening at several points during the lead-up to their U.S.-bound flights (see “Air Passenger Screening”).

### ***Consular Reviews<sup>35</sup>***

Before applying for admission at a U.S. port of entry, aliens seeking to visit the United States generally must obtain a visa at a U.S. consulate abroad. Visa applicants are required to submit biographic and biometric data, and usually must participate in an in-person interview. Applicants also may be subject to physical and mental examinations. Consular reviews are designed to ensure that aliens do not receive a visa to visit the United States if they are inadmissible for any of the reasons identified in INA §212, including health-related grounds, criminal history, security and terrorist concerns, indigence (likely to become a public charge), seeking to work without proper labor certification, ineligibility for citizenship, and certain previous immigration violations.

As part of the visa application process, DOS consular officers use the Consular Consolidated Database (CCD) to screen visa applicants. The CCD is a database of over 100 million visa and passport case records and 75 million photographs from 25 different DOS systems.<sup>36</sup> The CCD links automatically to the Consular Lookout and Support System (CLASS) database, which consular officers use to identify visa applicants on security watchlists or with other derogatory information, and to the Arrival and Departure Information System (ADIS) and the Automated Biometric Identification System (IDENT), which CBP officers use to screen arriving travelers at POEs (see “Text Box: Select Immigration Inspections Databases and Systems”). Consular officers refer high risk cases to DHS and other law enforcement agencies for Security Advisory Opinions (SAOs).

At certain consulates, the review process is further supplemented by the DHS Immigration and Customs Enforcement (ICE) Visa Security Program (VSP). Under this program, special agents at U.S. Immigration and Customs Enforcement (ICE) headquarters and in 20 high-risk consulates work with consular officers to examine visa applications for fraud, initiate investigations, coordinate with local law enforcement partners, and provide training and advice. The VSP Security Advisory Opinion Unit works with other law enforcement and intelligence agencies to provide a coordinated response when consular officers seek an SAO about a high risk case.<sup>37</sup>

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<sup>34</sup> Aliens seeking to come to the United States temporarily are known as nonimmigrants. These aliens are admitted to the United States for a temporary period of time and an expressed reason. For a fuller discussion, see CRS Report RL31381, *U.S. Immigration Policy on Temporary Admissions*.

<sup>35</sup> Except as otherwise noted, this section is based on CRS Report R41093, *Visa Security Policy: Roles of the Departments of State and Homeland Security*; see that report for a fuller discussion. Also see CRS Report R41104, *Immigration Visa Issuances and Grounds for Exclusion: Policy and Trends*.

<sup>36</sup> Department of State Privacy Coordinator, “Consular Consolidated Database (CCD) Privacy Impact Assessment (PIA),” March 22, 2010, <http://www.state.gov/documents/organization/93772.pdf>.

<sup>37</sup> Ibid. Also see Immigration and Customs Enforcement (ICE), *Congressional Budget Justification: FY2014*, pp. 36-37.

## Select Immigration Inspections Databases and Systems

**Advance Passenger Information System (APIS):** CBP database containing information about inbound air passengers and crew members. Air carriers submit passenger information to APIS prior to departing on U.S.-bound flights (or prior to arrival in the United States, in certain cases), and CBP uses the data to identify high-risk and inadmissible passengers.

**Arrival and Departure Information System (ADIS):** DHS database that collects and maintains biographic arrival and departure information on non-U.S. citizens traveling in and out of the United States. ADIS is maintained by CBP and the DHS Office of Biometric Identity Management (OBIM), and is the main database used by ICE to identify suspected visa overstayers.

**Automated Biometric Identification System (IDENT):** DHS's primary biometric database. Certain aliens' biometric records are added to IDENT upon admission to the United States, when aliens are apprehended or arrested by a DHS agency, and when aliens apply for certain immigration benefits.

**Automated Targeting System (ATS):** CBP database of incoming and certain outbound cargo and persons. Advanced screening information is added to the ATS and checked against intelligence data from CBP's National Targeting Center (NTC) and other intelligence and law enforcement databases to produce a risk-based score. Travelers above a certain ATS threshold generally are selected for secondary inspection.

**Consular Lookout and Support System (CLASS):** DOS database used by passport agencies, posts, and border inspection agencies to perform name checks on visa and passport applicants to identify subjects of terrorist lookouts and watchlists and other individuals who are ineligible for a visa or require other special action.

**Electronic System for Travel Authorization (ESTA):** Web-based CBP system that screens applicants to enter the United States through the Visa Waiver Program against terrorist, national security, and criminal watchlists.

**Integrated Automated Fingerprint Identification System (IAFIS):** Federal Bureau of Investigation (FBI) criminal database of fingerprints, criminal histories, photographs, and biographic information. Biographic and biometric records may be checked against IAFIS to verify that aliens have not been convicted of crimes making them inadmissible to the United States.

**Interagency Border Inspection System (IBIS):** DHS database of shared law enforcement files related to individuals, businesses, vehicles, aircraft, and vessels with suspected criminal violations. IBIS is used by CBP officers at POEs, U.S. Citizens and Immigration Services (USCIS) officers making determinations about immigration benefits, and other U.S. and international law enforcement agencies involved with border enforcement.

**National Crime Information Center (NCIC):** FBI database for tracking federal, state, local, and tribal crime data. NCIC includes records of stolen vehicles and other articles, foreign fugitives, missing persons, gang members, known or suspected terrorists, and persons with outstanding criminal warrants, among other data.

**National Targeting Center-Passenger (NTC-P):** CBP, other DHS, and DOS officials at the NTC-P use the Automated Targeting System to screen passenger manifests and visa records against the Terrorist Screening Database and other national security records in order to prevent certain travelers from boarding U.S.-bound flights.

**TECS (not an acronym):** The principal information-sharing system used by CBP officers at ports of entry to screen arriving travelers for admissibility to the United States. CBP officers use TECS to check travelers against law enforcement and national security watchlists and to record and report on primary and secondary inspection results.

**Terrorist Identities Datamart Environment (TIDE):** Classified database of known or suspected terrorists maintained by U.S. intelligence community. Data from TIDE are used to populate the FBI's Terrorist Screening Database (TSDB).

**Terrorist Screening Database (TSDB):** Also known as the consolidated Terrorist Watchlist, the TSBD is maintained by the FBI's Terrorist Screening Center, and includes biometric and biographic records of known and suspected domestic and international terrorists.

**Source:** CRS analysis of Departments of Homeland Security, Justice, State, and Defense Privacy Impact Assessments and related documents.

## **Visa Waiver Program**

The Visa Waiver Program (VWP) allows nationals from certain countries<sup>38</sup> to enter the United States as temporary visitors for business or pleasure *without* obtaining a visa from a U.S. consulate abroad. Thus, the program is designed to facilitate travel and tourism from low-risk countries, while also fostering positive relations with such countries, and holding down consular operating costs. In FY2013, there were over 19 million visitors who entered the United States under the VWP program, constituting 40% of overseas visitors.<sup>39</sup>

Some Members of Congress have raised concerns that the VWP may weaken security because travelers are not required to provide biometric data when applying for admission through the program and are exempted from consular reviews. In addition, some people see the program as vulnerable to visa overstays since the entry-exit system has not been fully implemented (see “Entry-Exit System: Implementation”).<sup>40</sup>

On the other hand, aliens seeking admission under the VWP are required to submit biographic information and respond to eligibility questions through an on-line Electronic System for Travel Authorization (ESTA). Upon receipt of an ESTA application, CBP screens applicants’ data against TECS and the Automated Targeting System.<sup>41</sup> And aliens authorized for travel under the VWP must provide biometric data during primary inspection at a POE prior to entering the United States.<sup>42</sup> The program also may enhance U.S. security because partner countries must meet specified document security and information-sharing requirements, and it benefits U.S. visitors to VWP countries because they receive reciprocal visa-free travel benefits.

## **Air Passenger Screening**

CBP conducts additional pre-travel screening of all persons (including U.S. citizens) seeking to travel to the United States by air.<sup>43</sup> Upon a traveler’s purchase of an airline ticket, commercial airlines are required to make Passenger Name Record (PNR) systems and data available to CBP up to 72 hours in advance of travel. When passengers check in for international flights to the

<sup>38</sup> The list of participating countries as of September 2013 includes Andorra, Australia, Austria, Belgium, Brunei, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Monaco, Malta, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Taiwan, and the United Kingdom. For a fuller discussion of the Visa Waiver Program, see CRS Report RL32221, *Visa Waiver Program*.

<sup>39</sup> DHS Office of Immigration Statistics, *Yearbook of Immigration Statistics: FY2013*, Table 25.

<sup>40</sup> See for example, U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration Policy and Enforcement, *Visa Waiver Program Oversight: Risks and Benefits of the Program*, 112<sup>th</sup> Cong., 1<sup>st</sup> sess., December 7, 2011.

<sup>41</sup> For a fuller discussion, also see DHS Privacy Office, “Privacy Impact Assessment for the Electronic System for Travel Authorization (ESTA),” June 2, 2008. In the first 11 months of FY2012, CBP vetted over 10.7 million ESTA applications, and denied more than 21,000 (0.2%) of them; see Testimony of CBP Assistant Commissioner Kevin McAleenan, U.S. Congress, House Committee on Homeland Security, Subcommittee on Border and Maritime Security, *Eleven Years Later: Preventing Terrorists from Coming to America*, 112<sup>th</sup> Cong., 2<sup>nd</sup> sess., September 11, 2012 (hereafter: McAleenan testimony, 2012).

<sup>42</sup> An alien found to be ineligible for VWP travel through ESTA still may apply for a visa before a U.S. consular officer.

<sup>43</sup> For a fuller discussion of CBP’s air passenger screening procedures, see McAleenan testimony, 2012. Also see CBP, “Advance Electronic Transmission of Passenger and Crew Member Manifests for Commercial Aircrafts and Vessels,” 72 *Federal Register* 48320-48345, August 23, 2007.

United States, carriers are required to transmit passenger and crew manifests to CBP prior to securing aircraft doors before departure. Biographic traveler data (passport and travel itinerary information) is submitted to the Advance Passenger Information System (APIS).

Passenger PNR and APIS data (as well as visa and ESTA data) are forwarded to CBP's National Targeting Center (NTC), where they are vetted against intelligence and law enforcement databases, including the consolidated terrorist watchlist and Interpol's lost and stolen passport list. Data are matched against targeting rules through the ATS to identify risky travelers. The NTC may issue a no-board recommendation to air carriers, and/or flag travelers for a secondary inspection upon arrival at a U.S. POE. The NTC issued 3,181 no-board recommendations in FY2011; it issued 4,199 no-board recommendations in FY2012, and 5,378 no-board recommendations in FY2013.<sup>44</sup>

Under the Immigration Advisory Program (IAP) program, created in 2004, CBP officers also are posted at 11 international airports in 9 partner countries.<sup>45</sup> IAP officers review documents, conduct interviews, and identify high-risk travelers. They do not have enforcement authority, but may recommend that air carriers not board certain passengers for U.S.-bound flights, flag passengers for secondary inspection upon arrival, and notify host-state law enforcement agencies of suspected criminal violations. Building upon the IAP concept, CBP launched the Joint Security Program (JSP) in 2009. Currently operational in Mexico City and Panama City, the JSP performs similar functions as the IAP, but also addresses travelers on international flights *not* bound to or from the United States. The IAP and JSP issued 2,890 no-board recommendations in FY2011, 2,505 no-board recommendations in FY2012, and 3,501 no-board recommendations in FY2013.<sup>46</sup> As of November 22, 2013, the IAP and JSP had made a total of 19,998 no-board recommendations since the IAP's inception in 2004.<sup>47</sup>

## Primary Inspections

CBP officers at ports of entry interview arriving travelers and check their travel documents to determine whether the person is admissible to the United States. Basic biographic information (e.g., name, travel document number, date and location of arrival) for all travelers (including U.S. citizens) is collected and stored within TECS.

Arriving travelers are subject to certain immigration, criminal, and national security background checks through the TECS system and the ATS, which identify certain travelers to be selected for secondary inspection. In general, these primary inspection activities have become far more intensive during the post-9/11 period. For example, whereas CBP historically examined drivers' documents at land POEs but did not consistently examine passenger documents, since 2010 CBP has inspected documents for 100% of land travelers. And whereas only 5% of land travelers were subject to law enforcement database queries in FY2005, 97% of land travelers were subject to such queries in FY2013. Southern border inspection protocols have focused in particular on

<sup>44</sup> McAleenan testimony, 2012; CBP Office of Congressional Affairs, December 30, 2013. No-board recommendations are not binding, but carriers generally accept them to avoid the penalties and costs associated with transporting improperly-documented travelers.

<sup>45</sup> Participating airports include Amsterdam, Doha, Frankfurt, London Heathrow and Gatwick, Madrid, Manchester, Mexico City, Panama City, Tokyo and Paris.

<sup>46</sup> CBP Office of Congressional Affairs, December 30, 2013.

<sup>47</sup> Ibid.

evolving threats related to drug trafficking organizations, smugglers, and unauthorized immigrants.<sup>48</sup>

Travelers are also validated against visa or visa waiver program records (for non-citizens) and against the APIS database (for all air travelers). Non-citizens arriving at air and sea ports are required to provide biometric data (fingerprints and digital photographs), which are added to the IDENT database and vetted against additional biometric databases (see “Text Box: Select Immigration Inspections Databases and Systems”).

Travelers determined by the CBP officer to be admissible are allowed to enter the United States, though they may be subject to a separate customs and/or agricultural inspection. Travelers suspected for any reason of being inadmissible, including because of high ATS scores or derogatory information in the TECS system, are referred to secondary inspection for additional screening and/or a more thorough interview (see “Secondary Inspection”).

## Preclearance

Travelers from 15 airports in Canada, Ireland, the Bahamas, Bermuda, and Aruba may be eligible to be pre-cleared by CBP officers based abroad. Preclearance (sometimes referred to as preinspection) includes the same document inspection, interview, and (as necessary) secondary inspection as normally occurs at a U.S. port of entry, including customs and agricultural screening. Preclearance officers at partner airports are unarmed and do not have law enforcement authority, but officers may refer people suspected of host-state criminal violations to partner country law enforcement agencies. Travelers arriving in the United States following a preclearance inspection may depart the aircraft directly into the arriving airport as they would from a domestic flight.

CBP may initiate preclearance facilities at the request of a host government and pursuant to a formal agreement with such a government. Host governments are responsible for providing secure preclearance facilities, and CBP covers officer salaries (including certain overseas expenses). CBP views passenger preclearance programs as enhancing U.S. security and reducing deportation costs because such programs screen passengers earlier in the travel process, preventing the arrival of inadmissible travelers, as well as illegal weapons, agricultural products, etc., on U.S. soil.<sup>49</sup> The programs also speed lawful travel by reducing congestion at U.S. airports, and they allow international travelers to take advantage of tighter U.S. connection times.

In April 2013, DHS reached an agreement with the government of the United Arab Emirates (UAE) to set up a preclearance facility in the Abu Dhabi International Airport. Some Members of Congress have raised objections to the proposed Abu Dhabi program because no U.S. air carriers fly directly from Abu Dhabi to the United States, arguably giving the UAE-owned Etihad Airlines a competitive advantage over U.S.-owned carriers, and because UAE is not a signatory to the United Nations Refugee Convention.<sup>50</sup> House appropriators included language in the House’s

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<sup>48</sup> CBP Office of Congressional Affairs, December 30, 2013.

<sup>49</sup> CBP, “Fact Sheet: Preclearance Operations,” May 2013.

<sup>50</sup> See for example, Letter from Hon. Michael McCaul, Hon. Bennie Thompson, Hon. Bill Shuster, et al. to Janet Napolitano, Secretary of Homeland Security, April 18, 2013; and U.S. Congress, House Committee on Foreign Affairs, Subcommittee on Terrorism, Nonproliferation, and Trade, *The Abu Dhabi Pre-Clearance Facility: Implications for U.S. Business and National Security*, 113<sup>th</sup> Cong., 1<sup>st</sup> sess., July 10, 2013.

FY2014 DHS Appropriations report to limit funding for preclearance operations in new locations unless an economic impact analysis of the new location on U.S. air carriers has been conducted and provided to the committee, among other conditions.<sup>51</sup>

## I-94 Arrival/Departure Records

Certain classes of nonimmigrants visiting the United States for a temporary period are issued an I-94 arrival/departure record upon admission.<sup>52</sup> The I-94 record indicates the date of admission, class of admission (i.e., visa category), and visa expiration date. For travelers arriving at land ports, the I-94 consists of a paper form stapled to the foreign passport. Travelers are supposed to surrender the I-94 upon departure; and CBP may use I-94 receipts to track nonimmigrant exits and identify visa overstays. In practice, however, this system has proven difficult to implement, and paper I-94 receipts often are not collected from departing travelers.

In 2013, CBP discontinued issuing paper I-94 forms for travelers arriving at air and sea ports. CBP now uses the APIS system and information collected by the State Department and by CBP officers at ports of entry to create electronic arrival/departure records for these travelers.<sup>53</sup> In place of paper I-94 receipts for exiting air and sea travelers, CBP relies on carrier exit manifests (passenger lists) to confirm passenger departures (see “Entry-Exit System: Implementation”).

## Secondary Inspections and Immigration Enforcement

Travelers who trigger an alarm in the ATS, who are the subject of certain derogatory information in TECS, or who arouse suspicion (through their behavior, responses to questions, or suspicious documents) during primary inspection may be referred for secondary inspection. A small sample of travelers at certain POEs also is randomly selected for secondary inspection (see “Random Compliance Examination (COMPEX) Program”). Travelers at land POEs who are required to obtain I-94 arrival/departure records (see “I-94 Arrival/Departure Records”) also are automatically referred to secondary inspection, where I-94s are issued. In general, travelers selected for secondary inspection may be subject to a more extensive interview and/or a physical search, as well as being subject to vetting against additional databases. At land POEs, travelers selected for secondary inspection (in contrast with other land travelers) must provide fingerprints data to be vetted against IDENT and other biometric databases (see “Text Box: Select Immigration Inspections Databases and Systems”).

## Inspection Outcomes

**Table 1** describes primary and secondary inspections by mode of entry for FY2005-FY2013. As **Table 1** indicates, *primary inspections* at air and sea POEs fell slightly in FY2008 - FY2009, likely as a result of the global economic downturn, and inflows have increased since that time.

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<sup>51</sup> H.Rept. 113-91, p. 32.

<sup>52</sup> Nonimmigrants exempted from the I-94 requirement include Canadians admitted as visitors for business or pleasure and Mexicans with border crossing cards; see 8 C.F.R. §235.1(h).

<sup>53</sup> For a fuller discussion, see 78 *Federal Register* 18457.

**Table I. CBP Primary and Secondary Inspections, by Mode of Entry, FY2005-FY2013**

<b>Fiscal Year</b>	<b>Air POEs</b>			<b>Sea POEs</b>			<b>Land POEs</b>		
	Primary	Secondary	Admissions	Primary	Secondary	Admissions	Primary	Secondary	Admissions
2005	86,067,723	1,730,318	85,990,506	15,951,767	NA	15,949,121	317,765,243	37,948,279	317,593,950
2006	87,844,145	2,035,959	87,796,222	15,958,508	NA	15,954,701	309,040,051	38,642,595	308,884,218
2007	91,650,242	4,926,793	91,606,534	18,347,270	89,834	18,334,501	297,680,056	38,445,467	297,534,607
2008	94,682,417	5,134,373	94,640,917	17,713,383	124,628	17,660,532	289,085,271	29,224,646	288,956,502
2009	87,749,074	5,373,858	87,704,806	16,928,474	154,081	16,863,944	256,514,233	29,952,109	256,399,212
2010	91,488,268	5,826,930	91,444,665	17,898,302	240,505	17,830,156	243,594,037	33,707,702	243,477,680
2011	94,604,610	5,558,384	94,566,280	18,757,561	241,041	18,691,407	226,984,093	32,429,991	226,877,381
2012	98,341,220	5,619,071	98,326,666	19,430,410	162,144	18,282,937	234,897,863	33,612,004	234,797,985
2013	102,221,415	5,342,236	102,172,540	17,882,894	130,908	17,831,338	242,064,137	29,879,235	241,960,854

**Source:** Data provided by CBP Office of Field Operations, December 30, 2013.

**Notes:** Complete data for secondary inspections at seaports were not available for FY2005-FY2006. Airport secondary inspection data excludes pre-clearance airports (about 17% of air travelers) and private aircraft and crew (less than 1% of air travelers).

Overall, inspections at air POEs increased about 19% in FY2005-FY2013, from about 86 million to about 102 million. Inspections at land ports fell more sharply, dropping every year FY2005-FY2011, before recovering slightly in FY2012-FY2013. At 242 million, land inspections in FY2013 were down 31% from the FY2005 total of 318 million. As a result of these trends, the total number of inspections fell from 420 million in FY2005 to 340 million in FY2011, before climbing back to 362 million in FY2013; and the proportion of all primary inspections occurring at land POEs fell from about 75% in FY2005 to about 67% in FY2013.

As **Table 1** also indicates, an increasing share of travelers was subject to *secondary inspections* during FY2005-FY2013. This trend exists across all three modes of entry, but was most pronounced at air POEs, where the proportion of travelers subject to secondary inspection increased from 2.0% in FY2005 to 6.4% in FY2010, before falling to 5.2% in FY2013 (5.3 million out of 102 million).<sup>54</sup> At sea POEs, the proportion of travelers subject to secondary inspection increased from 0.49% in FY2007 (the first year for which data are available) to a high of 1.3% in FY2010, to 0.7% in FY2013. And at land POEs, the proportion of travelers subject to secondary inspection increased from 11.9% in FY2005 to about 14% in FY2010-FY2012, before falling back to 12.3% in FY2013. At land ports, the increase in the secondary inspection rate has been a function of the *fall* in total travelers at such ports, not an increase in the number of secondary inspections.

A final observation about **Table 1** is that the great majority of travelers inspected at POEs are determined to be *eligible for admission*. Overall, the annual rate at which persons inspected at POEs were admitted to the United States remained steady at between 99.94% and 99.95% in FY2005-FY2013. (Put another way, about 5 out of 10,000 people arriving at a POE are denied admission.) Approval rates were similar across air, sea, and land modes of entry.

## Immigration Enforcement

Pursuant to 8 C.F.R. 235.1, the burden of proof is on the traveler to demonstrate to a CBP officer at a POE that the traveler is a U.S. citizen or an admissible foreign national. In general, a person arriving at a POE who is determined to be ineligible for admission may be subject to similar sanctions as an unauthorized alien present in the United States, including four main outcomes:

- **Withdrawal of application:** Pursuant to INA §235(a)(4), a CBP officer may permit an alien applying for admission to withdraw his or her application for admission and depart immediately from the United States. An alien withdrawing an application is not subject to additional penalties (i.e., a withdrawal does not result in a period of inadmissibility), but a record of the withdrawal is added to the alien's file and may influence a future visa eligibility determination.
- **Standard removal:** In general, an alien at a POE whom CBP determines to be inadmissible under INA §212 may be subject to removal from the United States under INA §240. Pursuant to INA §239, a CBP officer may initiate removal proceedings by serving an alien with written notice, known as a notice to appear (NTA). Pursuant to §240, an alien facing such removal proceedings generally may appear before an immigration judge and may be eligible to seek certain

<sup>54</sup> Data on secondary inspections at air POEs excludes preclearance airports (see in this report, “Preclearance”), which accounts for about 17% of air travel to the United States.

types of discretionary relief from removal. An alien who is formally removed from the United States generally is ineligible for a visa (i.e., is inadmissible) for at least five years,<sup>55</sup> and may be subject to criminal charges if he or she illegally reenters the United States.<sup>56</sup>

- **Expedited removal:** Pursuant to INA §235(b), an alien arriving at a POE without documents or with fraudulent documents and who does not indicate a fear of persecution may be subject to “expedited removal” (ER). Under this provision, an alien may be formally removed by order of a CBP officer without appearing before an immigration judge and without being eligible for certain forms of relief. Aliens removed by ER are subject to the same penalties as aliens removed under INA §240.
- **Criminal arrest:** CBP may arrest individuals (including U.S. citizens) at land, sea, and air POEs on the basis of an outstanding federal, state, local, or tribal criminal warrant; in response to a suspected violation of federal immigration-related crimes; or in response to a suspected violation of other federal border-related crimes, including smuggling crimes.

**Table 2** describes selected immigration enforcement outcomes at ports of entry for FY2005–FY2013. As **Table 2** indicates, there is no clear, sustained trend in three categories of interest: the overall number of aliens denied admission during this period has fluctuated between about 253,000 aliens in FY2005 and about 195,000 aliens in FY2012; the number of aliens issued a notice to appear (i.e., placed in standard removal proceedings) has fluctuated between about 15,000 aliens in FY2005 and about 24,000 aliens in FY2007 and FY2013 (consistently between 6 and 12% of aliens denied admission);<sup>57</sup> and the number of persons arrested on criminal charges or warrants has fluctuated between about 23,000 and 28,000.

**Table 2. Immigration Enforcement at Ports of Entry, Selected Outcomes**  
FY2005–FY2013

Fiscal Year	Total Admitted	Total Denied Admission	Withdrawal of Application	Notice to Appear	Expedited Removal	Criminal Arrests
2005	419,533,577	253,041	96,081	15,371	55,546	23,214
2006	412,635,141	209,437	93,022	22,445	45,983	23,448
2007	407,475,642	203,313	97,649	23,779	41,379	24,357
2008	401,257,951	224,705	85,157	21,259	38,808	24,347
2009	360,967,962	225,073	72,729	17,896	37,914	28,273

<sup>55</sup> INA §212(a)(9).

<sup>56</sup> INA §276.

<sup>57</sup> According to CBP (CRS communication with CBP Office of Congressional Affairs, December 30, 2013), the uptick in notices to appear observable since FY2011 reflects a pair of changes in recent years: in 2010 OFO directed a policy change to place certain arriving LPRs with criminal records in removal proceedings rather than permitting them to enter with deferred inspection orders, resulting in a rise in NTAs; and there has been an increase in the number of unaccompanied alien children arriving at ports of entry, who (pursuant to the Trafficking Victims Protection Reauthorization Act of 2008) must be placed into removal proceedings and served with an NTA under certain conditions.

Fiscal Year	Total Admitted	Total Denied Admission	Withdrawal of Application	Notice to Appear	Expedited Removal	Criminal Arrests
2010	352,752,501	231,045	75,866	19,189	38,590	27,868
2011	340,135,068	215,248	62,726	17,667	40,531	25,989
2012	351,407,588	195,142	55,171	21,928	34,802	24,087
2013	361,964,732	204,633	52,104	23,730	34,826	24,187

**Source:** Data provided by CBP Office of Legislative Affairs, December 30, 2013.

**Notes:** In addition to the categories listed in this table, aliens denied admission include crewmembers detained on board vessels (i.e., denied shore leave), persons paroled into the United States, persons permitted to enter with deferred inspection orders, persons granted voluntary return, and visa waiver program travelers refused admission, among others. Criminal arrests include U.S. citizens.

**Table 2** also reveals two apparent trends in enforcement outcomes at POEs. First, the number of aliens permitted to withdraw their applications for admission has fallen steadily from about 96,000 in FY2005 to about 52,000 in FY2013. According to CBP, this reduction is explained, at least in part, by a 2008 OFO directive permitting officers to exercise discretion in certain cases where applicants for admission are technically inadmissible due to a minor documentary deficiency, such as a recently expired passport or nonimmigrant visa. In such cases, aliens may be permitted to correct their documentation and reapply for admission at a later date and time without being required to formally withdraw an application for admission.<sup>58</sup>

Second, the number of aliens placed in expedited removal fell by about one-third between FY2005 and FY2009 (from about 55,000 to about 38,000), and has remained roughly flat since that time. It is not clear whether the initial drop in ER cases reflected a policy change, a change in the demographics of arriving aliens, or a statistical anomaly. Overall, the data in **Table 2** do not appear to reflect a significant shift at POEs toward “high consequence” enforcement outcomes (i.e., an increase in the proportion of removable aliens facing criminal charges and/or formal removal). This trend stands in contrast to enforcement trends *between* ports of entry, where the Border Patrol has more systematically implemented CBP’s Consequence Delivery System.<sup>59</sup>

## Random Compliance Examination (COMPEX) Program

CBP’s Random Compliance Examination (COMPEX) program was established by the legacy U.S. Customs Service in 1999 to gather information about the effectiveness of the passenger inspections process, and CBP expanded the program after the creation of DHS to also encompass more general immigration and agricultural inspection activities. The program selects a random sample of vehicles and air passengers who would be cleared for admission to the United States during primary inspection, and subjects the sample to a detailed secondary examination. CBP counts violations detected in the sample of otherwise-cleared travelers to estimate the number of undetected violations.

<sup>58</sup> CBP Office of Congressional Affairs, December 30, 2013.

<sup>59</sup> The Consequence Delivery System is a CBP program to promote formal removal, criminal charges, lateral repatriation, and other “high consequence” enforcement outcomes for aliens apprehended at the Southwest border; for a fuller discussion see CRS Report R42138, *Border Security: Immigration Enforcement Between Ports of Entry*.

In FY2012, CBP reports that the COMPEX program was operational at 19 commercial airports representing over 80% of traveler volume, and at 105 land POEs representing over 94% of private vehicle volume.<sup>60</sup> The program conducted over 640,000 random secondary inspections, including 184,000 air passengers and 456,000 vehicles at land POEs. Overall, a very small percentage of travelers in the sample were found to have committed a major violation.<sup>61</sup>

Theoretically, the COMPEX program offers a powerful tool to estimate illegal flows and CBP's effectiveness rate at POEs. Whereas developing accurate and reliable estimates of illegal flows and of the effectiveness of enforcement between POEs is notoriously difficult because of uncertainty about the number of unobserved inflows,<sup>62</sup> detailed secondary inspections on a sample of inflows at POEs should produce an accurate count of violations within this group. And as long as the sample is statistically valid, CBP could use COMPEX results to estimate total illegal inflows and the apprehension rate at POEs.

On the other hand, COMPEX is limited in some respects as a tool for describing illegal immigration flows. One limitation is that the program covers air passengers and personal vehicles at land POEs, but does not cover sea passengers, pedestrians at land POEs, or most cargo operations.<sup>63</sup> Second, while a CBP officer may order the collection of biometric data as part of a COMPEX secondary inspection, such data is not collected systematically. As a result, while the program likely detects certain types of illegal migration through POEs (i.e., unauthorized immigrants hidden within passenger vehicles), COMPEX is not designed to detect certain other illegal inflows (i.e., unauthorized immigrants hidden within cargo containers or unauthorized immigrants using fraudulent documents or documents belonging to another person—not to mention flows of legal visitors who eventually overstay a nonimmigrant visa).

A third limitation is that while COMPEX is designed to produce a statistically valid estimate of the overall number of POE violations, the program is *not* designed to measure violations within specific subcategories of flows, including the subcategory of illegal migration.<sup>64</sup> In addition, while sampling at land POEs is based on the random assignment of cases through the TECS system, sampling at airports is based on the manual selection of cases by port managers and senior officers, which may introduce sample bias. Reportedly, COMPEX inspections also may be suspended at certain ports and certain times in order to speed processing times.<sup>65</sup> For all of these reasons, it is not possible, based on COMPEX findings, to draw reliable inferences about total illegal inflows through POEs.

A final concern about COMPEX is that information about the program has not been widely available. CBP considers such information law-enforcement sensitive, and does not publish information about COMPEX results or methodology; Congress has never held a public hearing on the program; and it has never been the subject of an extensive Government Accountability

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<sup>60</sup> CBP Office of Congressional Affairs, March 31, 2013.

<sup>61</sup> Specific program results are considered law enforcement sensitive and are not available for publication.

<sup>62</sup> See CRS Report R42138, *Border Security: Immigration Enforcement Between Ports of Entry*.

<sup>63</sup> CBP is developing an expansion of COMPEX to extent to pedestrian crossing at land POEs; this component of the program is currently being pilot tested and is expected to become formally operational in FY2015.

<sup>64</sup> CBP Office of Congressional Affairs, December 30, 2013.

<sup>65</sup> See Testimony of National Treasury Employees Union President Colleen M. Kelley, U.S. Congress, House Committee on Homeland Security, Subcommittee on Border and Maritime Security, *Cargo Security Threats at Land Ports of Entry*, 111<sup>th</sup> Cong., 1<sup>st</sup> sess., October 22, 2009.

Office (GAO) study.<sup>66</sup> These limitations make it difficult to evaluate the program or to weigh potential program reforms (also see “Illegal Migration through Ports of Entry”).

## Trusted Traveler Programs

Pursuant to §7209(k) of the IRTPA, CBP manages a number of “trusted traveler” programs that permit travelers to voluntarily provide detailed biometric and biographic data to CBP, and thereby to be eligible for expedited admission at POEs. Trusted traveler programs are designed to facilitate the admission of known, low-risk travelers and to strengthen security by focusing enforcement resources on unknown travelers (also see “Trusted Traveler Programs: Issues for Congress”).

### *Global Entry*

The main trusted traveler program is Global Entry, which is open to U.S. citizens and LPRs, Dutch citizens, South Korean citizens, and Mexican nationals. Canadian nationals also may receive Global Entry benefits by joining NEXUS (not an acronym; see “NEXUS”).<sup>67</sup> In addition to meeting the nationality requirement, Global Entry applicants must *not*

- provide false or incomplete application information;
- have any previous criminal convictions or outstanding warrants;
- have any previous immigration violations;
- be the subject of an ongoing criminal investigation;
- be inadmissible to the United States;
- have any known or suspected terrorist connections; or
- be unable to satisfy CBP that they are low risk.

Applicants are required to provide biometric data and participate in an in-person interview. Applicants are checked against a variety of national security and criminal databases during the initial application and upon each visit to the United States; and the entire trusted traveler list also is subject to regular re-checks against certain databases.

In general, Global Entry members are eligible for expedited processing at participating POEs, which include 44 airports in the United States, Canada, Ireland, Guam, Northern Mariana Islands, and Puerto Rico.<sup>68</sup> Instead of the normal primary and customs inspections, members present their machine-readable travel documents (via a card-swipe system), fingerprints (via a scanner), and customs declarations (via touchscreen) at an automated Global Entry kiosk. In most cases, the kiosk issues a receipt, and travelers may claim their bags and exit into the airport without further

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<sup>66</sup> The Government Accountability Office (GAO) initiated a major review of the COMPEX program in July 2001, but suspended the study following the 9/11 attacks; see GAO, *Customs and INS: Random Inspection Programs Can Be Strengthened*, GAO-02-215R, December 3, 2001. Other GAO work on COMPEX has been more limited.

<sup>67</sup> Eligibility criteria for Global Entry are defined in 8 C.F.R. §235.12.

<sup>68</sup> Pursuant to 8 C.F.R. §235.12, a list of participating Global Entry locations is available at <http://www.globalentry.gov/locations.html>.

inspection. Global Entry members still may be selected for secondary inspection on the basis of derogatory information during the screening process or at random.

## **NEXUS**

NEXUS (not an acronym) is a jointly-managed U.S.-Canadian trusted traveler program. NEXUS applicants must meet similar eligibility requirements as those for Global Entry, and must be approved by both countries. As noted, NEXUS members automatically are eligible to use Global Entry kiosks and enjoy similar benefits at Global Entry locations. NEXUS members also receive a secure, Radio Frequency Identification (RFID)<sup>69</sup> photo ID card that is Western Hemisphere Travel Initiative (WHTI) compliant, and that offers expedited processing through dedicated NEXUS travel lanes at 20 land POEs on the U.S.-Canadian border.<sup>70</sup>

## ***Secure Electronic Network for Travelers Rapid Inspection (SENTRI)***

The Secure Electronic Network for Travelers Rapid Inspection (SENTRI) program is a trusted traveler program that provides similar benefits at the U.S.-Mexico border as NEXUS provides at the U.S.-Canada border. SENTRI members receive a WHTI-compliant RFID card, which may be used at 11 land POEs.<sup>71</sup> Unlike NEXUS, SENTRI is not jointly managed by the United States and Mexico. SENTRI members also must register their vehicles with the program, and may only use SENTRI lanes while driving registered vehicles. SENTRI applicants are subject to somewhat more stringent application requirements, and must provide

- original evidence of citizenship;
- original evidence of admissibility to the United States (for non-U.S. citizens);
- driver's license or state ID document;
- vehicle registration and proof of insurance or a notarized letter authorizing use of the vehicle if the SENTRI applicant is not the vehicle owner;
- evidence of employment or financial support; and
- evidence of residence.

**Table 3** summarizes cumulative trusted traveler program membership for FY2009-FY2013. As **Table 3** indicates, all three programs have grown substantially during this period, with NEXUS and SENTRI growing five-fold and seven-fold, respectively, and Global Entry growing by a factor of 45. As of FY2013, Global Entry and NEXUS each counted over 900,000 members, while SENTRI included almost 360,000.

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<sup>69</sup> Radio Frequency Identification (RFID) is a contactless integrated circuit technology that permits scanners to read data tags quickly and remotely; EZ-Pass highway toll transponders are a familiar example.

<sup>70</sup> A list of ports with dedicated NEXUS lanes and hours of operation is available at <http://cbsa-asfc.gc.ca/prog/nexus/land-terre-eng.html#where-ou>.

<sup>71</sup> A list of ports with dedicated Secure Electronic Network for Travelers Rapid Inspection (SENTRI) lanes is available at [http://www.cbp.gov/xp/cgov/travel/trusted\\_traveler/sentri/sentri.xml](http://www.cbp.gov/xp/cgov/travel/trusted_traveler/sentri/sentri.xml).

**Table 3. Cumulative Membership in CBP Trusted Traveler Programs, FY2009-FY2013**

Fiscal Year	Global Entry	NEXUS	SENTRI
2009	20,166	141,537	44,242
2010	76,435	457,630	229,224
2011	200,380	589,871	263,937
2012	431,004	737,302	301,889
2013	935,510	900,499	357,731

**Source:** CBP Office of Congressional Affairs, December 30, 2013.

**Note:** Enrollment figures for each fiscal year are cumulative.

**Table 4** describes the annual number of travelers admitted through NEXUS and SENTRI lanes and Global Entry kiosks in FY2010-FY2013. As **Table 4** indicates, trusted traveler flows have also increased during this period, though not as quickly as program membership, with Global Entry flows increasing seven-fold since FY2010, NEXUS flows doubling during this period, and SENTRI flows growing by about 50%.

**Table 4. Annual Travelers Admitted, CBP Trusted Traveler Programs, FY2010-FY2013**

Fiscal Year	Global Entry	NEXUS	SENTRI
2010	344,161	2,843,861	12,520,286
2011	893,532	3,784,569	15,866,233
2012	1,670,790	5,114,107	17,816,896
2013	2,785,205	5,902,762	19,743,147

**Source:** CBP Office of Congressional Affairs, December 30, 2013.

## Outbound Enforcement

At certain land ports on the Southern border, travelers may be subject to screening and potential inspection as they depart the United States. Outbound enforcement is managed by the Outbound Programs Division within the Office of Field Operations. The division's mandate focuses on addressing violence in Mexico and the Mexico-United States drug trade by interdicting illegal currency, arms, and ammunition outflows. DHS reports that about 700 CBP officers participate in the outbound enforcement program.<sup>72</sup>

**Table 5** describes annual seizures by the Outbound Programs Division for FY2009-FY2013. As **Table 5** indicates, outbound enforcement seized a total of about 5,100 kilograms of illegal drugs during this period in 3,442 separate seizure incidents; \$221 million worth of illegal currency exports; 8,210 illegal weapons, and about 12.1 million rounds of ammunition. Some experts view the number of southbound drug seizures—almost 3 per day in FY2013—as an indicator of the global nature of the market for illegal drugs, and of the United States' emerging role as a

<sup>72</sup> See DHS, *U.S. Customs and Border Protection Salaries and Expenses*, Fiscal Year 2014 Congressional Budget Justification, p. 90.

transshipment country for illegal drugs. At the same time, while seizure incidents have increased since FY2009, the average seizure size fell sharply in FY2013. Illegal currency and ammunition seizures are also down since FY2009 and FY2010, respectively. It is not clear whether the recent drop in illegal drug volume and the sustained drops in currency and ammunition seizures reflect changes in tactics by drug trafficking organizations or are statistical anomalies.

**Table 5. CBP Outbound Enforcement Seizures, FY2009-FY2013**

Fiscal Year	Illegal Drugs (kilograms)	Illegal Drugs (incidents)	Currency (dollars)	Weapons	Ammunition Rounds
2009	336	438	58,120,418	435	2,237,619
2010	878	527	46,813,819	2,351	7,340,472
2011	1,434	549	47,303,379	1,986	1,960,636
2012	1,911	897	31,665,153	653	213,579
2013	540	1,031	37,122,471	2,785	387,724
<b>Total</b>	<b>5,099</b>	<b>3,442</b>	<b>221,025,240</b>	<b>8,210</b>	<b>12,140,030</b>

**Source:** CBP Office of Congressional Affairs December 30, 2013.

Some people have argued that the United States should place greater emphasis on outbound enforcement to disrupt transnational criminal operations. According to this view, preventing U.S.-Mexico money and currency flows would eliminate the incentive for Mexico-U.S. drug flows, while also reducing criminal organizations' firepower.<sup>73</sup>

Outbound enforcement efforts confront a number of challenges, however. Laws restricting international currency transfers are notoriously difficult to enforce.<sup>74</sup> Outbound enforcement also takes resources away from inbound inspections, so that increasing outbound screening may add to inbound delays or compromise inbound security. In addition, most outbound lanes are not equipped with inspection infrastructure, leaving officers exposed to the elements and to nearby traffic flows.<sup>75</sup> Limited outbound lanes also mean that inspections may result in long waits for outbound travelers. Partly to address these concerns, outbound enforcement operations are normally short-term surges, followed by periods of reduced inspections.<sup>76</sup> Yet some analysts have argued that sophisticated criminal organizations can defeat enforcement surges by monitoring outbound lanes, and by suspending high value outflows whenever a surge is underway.

<sup>73</sup> See CRS Report R41547, *Organized Crime: An Evolving Challenge for U.S. Law Enforcement*; also see Terry Goddard, *How to Fix a Broken Border: Hit the Cartels Where It Hurts*, American Immigration Council, Washington, DC, September 2011.

<sup>74</sup> Among other challenges, money may flow across the border in unrestricted amounts through "stored value" cards; and banks may permit questionable money transfers by establishing "funnel" accounts. See *Ibid.*; and GAO, *Challenges Exist in the Federal Government's Effort to Stem Cross-Border Currency Smuggling*, GAO-11-73, October 2010.

<sup>75</sup> See U.S. Government Accountability Office (GAO), *Moving Illegal Proceeds: Opportunities Exist for Strengthening the Federal Government's Efforts to Stem Cross-Border Currency Smuggling* GAO 11-407, March 9, 2011.

<sup>76</sup> See DHS, *U.S. Customs and Border Protection Salaries and Expenses*, Fiscal Year 2012 Congressional Submission, p. 90. In addition to these episodic surges, port officials have told CRS that 100% of outbound vehicle and pedestrian traffic at some southwest border POEs is subject to visual screening (i.e., an officers watches outbound flows); and officers may temporarily close exit lanes to interview and/or inspect suspicious travelers.

## Entry-Exit System: Implementation

As noted elsewhere, Section 110 IIRIRA, as amended, requires DHS to implement an automatic, biometric entry-exit system that covers all non-citizen travelers into and out of the United States and that identifies visa overstayers (see “Entry-Exit System: Legislative Requirements”). Prior to 1997, the INS collected entry-exit data manually by obtaining paper copies of traveler’s I-94 records (see “I-94 Arrival/Departure Records”), and an INS contractor manually keyed in data from the forms. This system was unreliable because paper forms were not consistently collected (particularly departure forms); forms were not timely provided to the contractor; and data input errors were widespread.<sup>77</sup> INS initiated a pilot program in 1997 to further automate I-94 data collection by having airlines provide magnetic stripe I-94 arrival cards. Passengers passed the cards to INS agents at POEs during primary inspection. The automated system also proved problematic, however, because airlines were reluctant to participate, because departure cards still were not reliably collected, and because the system did not cover land travelers, among other shortcomings.<sup>78</sup>

With the passage of new entry-exit mandates in 2000-2001 (see “Entry-Exit system: Legislative Requirements”) and the creation of the Department of Homeland Security (DHS) in 2002, the U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT) program was established within DHS in 2004 to manage the entry-exit system. US-VISIT was renamed the Office of Biometric Identity Management (OBIM) in March 2013.<sup>79</sup> CBP works with OBIM to collect and manage entry-exit data as described below.

### Entry-Exit Databases

Entry-exit data are stored in two DHS databases: the Arrival and Departure Information System (ADIS) and the Automated Biometric Identification System (IDENT).

#### *Arrival and Departure Information System (ADIS)*

ADIS includes biographic traveler identification data (name, date of birth, nationality, gender, passport number and country, U.S. visa number, and related information), arrival and departure information (POE and travel date), and a person-specific Fingerprint Identification Number System (FINS) identifier that allows ADIS to be cross-referenced with the IDENT system (see “Automated Biometric Identification System (IDENT)”).<sup>80</sup> Although ADIS includes the FINS biometric identifier, ADIS is a *biographic* database because its records are populated by reading

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<sup>77</sup> See Department of Justice, Office of Inspector General, *The Immigration and Naturalization Service’s Automated I-94 System*, 2001.

<sup>78</sup> Ibid.; also see GAO, *Information Technology: Homeland Security Needs to Improve Entry Exit System Expenditure Planning*, GAO-03-563, June 2003.

<sup>79</sup> The Office of Biometric Identity Management (OBIM) is a division within DHS’s National Protection and Programs Directorate. The Administration’s FY2014 budget request proposed (for the second year in a row) to eliminate US-VISIT/OBIM and to transfer the entry-exit program into CBP and ICE, but both chambers rejected the Administration’s proposed realignment during the FY2014 cycle. See CRS Report R43147, *Department of Homeland Security: FY2014 Appropriations*.

<sup>80</sup> For a fuller discussion of the Arrival and Departure Information System (ADIS), see 68 *Federal Register* 69412.

identity documents, rather than by capturing fingerprints or other physiological data directly from the traveler. As of September 30, 2013, ADIS included over 280 million unique records.<sup>81</sup>

### ***Automated Biometric Identification System (IDENT)***

IDENT includes biographic data (including name, aliases, date of birth, phone numbers, addresses, nationality, personal descriptive data), biometric identifiers (including fingerprints and photographs), and information about subjects' previous immigration enforcement histories (including previous immigration apprehensions and arrests). IDENT is a fully *biometric* database that makes use of fingerprint scanners and digital cameras to collect physical data directly from database subjects. As of September 30, 2013, IDENT included over 160 million unique records.<sup>82</sup>

The IDENT database initially was designed to capture only index fingerprints (i.e., two prints per person), and mainly was conceived of as a tool for tracking foreign visitors and identifying visa overstayers. With the creation of the Federal Bureau of Investigation's (FBI's) Integrated Automated Fingerprint Identification System (IAFIS) in 1999,<sup>83</sup> the legacy Immigration and Naturalization Service (INS) and the FBI decided to integrate the IDENT and IAFIS databases to better identify criminal aliens. This integration eventually required the reconfiguration of IDENT as a ten-print system. It took several years to complete this transition, but by 2010 all CBP and Border Patrol locations had deployed fully integrated IDENT/IAFIS workstations.<sup>84</sup>

Particularly after the 9/11 attacks, the entry-exit system increasingly was seen as a national security tool for vetting arriving passengers. The USA PATRIOT Act required that the system be designed to permit background checks against relevant databases and identity verification throughout the visa application and admissions processes (see "Entry-Exit System: Legislative Requirements"). As of September 30, 2013, the IDENT security watchlist included 7.2 million people.<sup>85</sup>

### **Collection of Entry Data**

Under US-VISIT/OBIM, the automated I-94 pilot program was discontinued, and entry data collection has been integrated into the immigration inspections process. In general, CBP officers collect entry data at ports of entry, and entry records automatically are added to the ADIS and (as appropriate) IDENT databases.

Entry data collection has been enhanced in three main ways in the post-9/11 period. First, pursuant to the Visa Waiver Permanent Program Act (P.L. 106-396) and the IRTPA (P.L. 108-458), almost all travelers to the United States must present machine-readable passports or

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<sup>81</sup> Office of Biometric Identify Management (OBIM), Office of Congressional Affairs, November 15, 2013.

<sup>82</sup> Ibid.

<sup>83</sup> The Integrated Automated Fingerprint Identification System (IAFIS) database includes electronic ten-print records of more than 66 million subjects in its criminal master file along with more than 25 million civil fingerprints. See Federal Bureau of Investigation, "Integrated Automated Fingerprint Identification System," [http://www.fbi.gov/about-us/cjis/fingerprints\\_biometrics/iafis/iafis](http://www.fbi.gov/about-us/cjis/fingerprints_biometrics/iafis/iafis).

<sup>84</sup> For a fuller discussion of IDENT/IAFIS integration, see CRS Report RL32562, *Border Security: The Role of the U.S. Border Patrol*.

<sup>85</sup> Office of Biometric Identify Management (OBIM), Office of Congressional Affairs, November 15, 2013.

similarly secure travel documents to enter the country (see “Inspections for Admissions”). These standards are designed to improve *biographic* data collection by combatting document and identity fraud and reducing data input errors by automating information capture.

Second, beginning in 2004, US-VISIT deployed integrated biometric workstations (i.e., fingerprint scanners) at POEs to facilitate *biometric* data collection. Workstations were deployed at 115 airports and 14 sea ports beginning in January 2004, expanded to the 50 busiest land POEs by the end of 2004, and have been operational at almost all POEs since December 2006.<sup>86</sup>

Third, under a final rule published in 2009, all non-U.S. citizens entering the United States are required to provide biometric data with the exceptions of Canadian nationals admitted as visitors, LPRs returning from cruises that begin and end in the United States or entering at land ports of entry, Mexican nationals with border crossing cards (BCCs),<sup>87</sup> and travelers with other visas explicitly exempted from the program.<sup>88</sup> In practice, the 2009 rule means that virtually all arriving non-citizens at air and seaports (other than U.S. LPRs returning from U.S.-based cruises) are required to provide biometric data during primary inspection. At land ports, arriving passengers only provide biometric data in secondary inspection (see “Secondary Inspections”). It bears emphasis that while a relatively small number of visa *categories* are exempted from the biometric requirement, these exemptions cover the *majority of foreign visitors* to the United States.<sup>89</sup>

## Collection of Exit Data

In general, the United States does not have a history of collecting exit data from departing travelers. (In contrast, European Union member states, among other countries, for many years have required that people pass through passport control booths not only upon admission to the country, but also prior to their departure.) As a result, DHS and its predecessor agency have confronted inadequate port infrastructure and staffing to readily implement exit data collection as required by existing law.

Since 2004, DHS has tested six exit data pilot programs and demonstration projects described below. Four of the programs have been described as problematic, and have been discontinued; but

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<sup>86</sup> According to a 2009 GAO report, US-VISIT was operational at all 115 airports, 14 seaports, and 154 of 170 land ports. US-VISIT was not deployed to the remaining land POE's because most visitors subject to US-VISIT requirements were not authorized to use them or because, in two cases, the ports did not have the necessary transmission lines to operate US-VISIT. See U.S. Government Accountability Office, *Homeland Security: Key US-VISIT Components at Varying Stages of Completion, but Integrated and Reliable Schedule Needed*, GAO-10-13, November 2009, p. 7, <http://www.gao.gov/new.items/d1013.pdf>.

<sup>87</sup> Border crossing cards (BCC, also known as “laser visas”) are short-term multiple-entry, 10-year nonimmigrant visas that may be issued to certain citizens of Mexico for business or tourism. BCC holders are permitted to visit the United States for up to 30 days and must remain within a zone up to 25 miles from the border in Texas, New Mexico, and California or within 75 miles of the border in Arizona.

<sup>88</sup> U.S. Department of Homeland Security, Privacy Impact Assessment Update for the United States Visitor and Immigrant Status Indicator Technology Program (U.S.-VISIT) in Conjunction with the Final Rule (73 FR 7743), Enrollment of Additional Alien in US-VISIT,” February 10, 2009.

<sup>89</sup> According to DHS data, there were about 165 million nonimmigrant admissions to the United States in FY2012, including about 54 million (33%) I-94 admissions (generally required to provide biometric data) and about 106 million tourists and business travelers from Canada and Mexicans with BCCs (generally exempted from the biometric requirement); see Randall Monger, *Nonimmigrant Admissions to the United States: 2012*, U.S. Department of Homeland Security Office of Immigration Statistics, Annual Flow Report, August 2103, [http://www.dhs.gov/sites/default/files/publications/ois\\_ni\\_fr\\_2012.pdf](http://www.dhs.gov/sites/default/files/publications/ois_ni_fr_2012.pdf).

two programs involving biographic information sharing with air carriers and with the government of Canada have been described by DHS as successful, and are ongoing.

### **2004-2007: Air/Sea Exit Pilot Program**

Between January 2004 and May 2007, US-VISIT tested three different biometric exit technologies at 12 airports and 2 seaports under the so-called Increment 1B Pilot Program. At different airports and seaports, the program tested biometric collection kiosks located inside secure checkpoints, biometric collection mobile devices located in departure gate areas, and a combination of kiosks and mobile validator devices. DHS's evaluation of the program reportedly found that all three technologies and scenarios successfully captured biometric and biographic information, and that data collection required between 60 and 90 seconds per passenger.<sup>90</sup>

Based on a series of reports in 2005-2007, GAO concluded in 2007 that the Increment 1B air and sea pilot had "not been managed well"; and GAO recommended that DHS discontinue the program. In addition to concerns about program planning, oversight, and analysis of alternatives, GAO found that only 24% of travelers subject to US-VISIT requirements complied with the exit procedures, and that the program lacked enforcement measures and had not evaluated the effect of adding such measures.<sup>91</sup> According to DHS's evaluation of the program, traveler compliance could be improved by integrating biometric data collection into the normal departure flow.<sup>92</sup>

### **2005-2006: Land Exit Proof of Concept**

The lack of exit infrastructure and the potential for congestion as a result of exit data collection are viewed as particularly problematic at land POEs. Between August 2005 and November 2006, DHS operated a land exit proof-of-concept demonstration project at five ports of entry on the southern and northern borders to test the use of Radio Frequency Identification (RFID) technology for tracking departures. Under the project, RFID tags were added to about 200,000 I-94 forms issued to nonimmigrant visitors.<sup>93</sup> The goal of the project was to capture exit data with minimal new infrastructure or DHS staffing and without adding to border congestion.<sup>94</sup>

RFID technology is limited to biographic data, however. In addition, based on the demonstration project, RFID data collection proved unreliable, with successful data collection from RFID tags rates as low as 14% at some ports, and with scanners unable to consistently distinguish between RFID entries and exits.<sup>95</sup> Thus, the conclusion drawn by GAO from the demonstration project was that RFID appears to be an inappropriate technology for exit data collection.<sup>96</sup>

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<sup>90</sup> DHS, *US-VISIT Air Exit Pilots Evaluation Report, Fiscal Year 2009 Report to Congress*, Washington, DC, October 26, 2009, p. 60.

<sup>91</sup> GAO, *Homeland Security: Prospects for Biometric US-VISIT Exit Capability Remain Unclear*, GAO-07-1044T, June 28, 2007, pp. 7-8.

<sup>92</sup> DHS, *US-VISIT Air Exit Pilots Fiscal Year 2009 Report*, p. 60.

<sup>93</sup> Marc Songini, "DHS Nixes Use of RFID In Border Security Program," *Computer World*, February 15, 2007.

<sup>94</sup> For a fuller discussion, see GAO, *Border Security: US-VISIT Program Faces Strategic, Operational, and Technological Challenges at Land Ports of Entry*, GAO-07-378T, January 31, 2007.

<sup>95</sup> Ibid., pp. 18-19.

<sup>96</sup> GAO, *Homeland Security: Key US-VISIT Components at Varying Stages of Completion, but Integrated and Reliable Schedule Needed*, GAO-10-13, January 2009, p. 9.

## 2009: Air Exit Pilot Program

Between May and July of 2009, US-VISIT worked with CBP and the Transportation Security Administration (TSA) to operate a pair of biometric air exit pilot programs. At the Detroit airport, CBP officers collected biometric data from aliens subject to US-VISIT at departure gates for selected international flights. Data was usually collected in aircraft jetways, between air carrier boarding pass collection and travelers' entry onto aircraft. Certain CBP officers were assigned to review travelers' documents to identify people subject to the program, who were then referred to additional officers for data collection. At the Atlanta airport, TSA officers screened travelers prior to their entry into the TSA security checkpoint to identify people subject to US-VISIT requirements. Such people were referred to a special line within the checkpoint, where other TSA officers collected their biometric data.<sup>97</sup>

DHS concluded that the pilot generally confirmed that biometric data may be collected from departing travelers. During the course of the program, about 500,000 travelers were screened by CBP and TSA officers; about 30,000 were identified as subject to US-VISIT; and only one traveler refused to provide his biometric data.<sup>98</sup> Data collection only required a few seconds per passenger, and produced data of adequate quality for enrollment in IDENT.<sup>99</sup>

On the other hand, DHS also found that identifying travelers subject to US-VISIT requirements necessitated "extensive interaction" between screeners and travelers, that scaling up a program to cover all departures would greatly exceed available staffing capacity, that flight delays and related problems interfered with data collection, and that pilots and crew often boarded flights too early to be enrolled by CBP officers.<sup>100</sup> Locating US-VISIT screening and data collection at TSA checkpoints also had an impact on a large number of U.S. citizens and passengers scheduled for domestic flights;<sup>101</sup> and screening at TSA checkpoints arguably is less reliable than jetway screening when it comes to ensuring that people providing exit data actually leave the country.

In addition to these specific concerns, DHS's more extensive review of its biometric exit testing concluded that a comprehensive biometric air exit system "faces enormous cost and logistical challenges," with funding requirements projected to total about \$3 billion over a 10 year period. For these reasons, in 2010 DHS adopted a plan to focus in the near-term on enhanced *biographic* data collection and analysis to identify potential overstayers, and to invest in research and development of emerging *biometric* technology to be employed in a *future* exit system.<sup>102</sup>

## 2009-2010: H-2A and H-2B Land Exit Pilot Program

In December 2009, US-VISIT and CBP initiated a pilot program to collect biometric data from exiting H-2A and H-2B temporary workers.<sup>103</sup> The pilot deployed kiosks adapted for outdoor use,

<sup>97</sup> DHS, *US-VISIT Air Exit Pilots Fiscal Year 2009 Report*, pp. 5-8.

<sup>98</sup> *Ibid.*, pp. iii-iv.

<sup>99</sup> *Ibid.*, p. vi.

<sup>100</sup> *Ibid.*, pp. v – vi.

<sup>101</sup> *Ibid.*, p. vii.

<sup>102</sup> DHS, *Comprehensive Biometric Air Exit Plan, Fiscal Year 2012 Report to Congress*, Washington, DC, May 11, 2012, pp. 3-4.

<sup>103</sup> H-2A visas permit certain foreign workers to perform temporary nonagricultural service or labor, and H-2B visas permit certain foreign workers to perform non-agricultural service or labor; see CRS Report R42434, *Immigration of (continued...)*

and applied to certain H-2A and H-2B workers who entered and exited through the San Luis, AZ and Douglas, AZ POEs.<sup>104</sup> DHS reportedly plans to use information from the land exit pilot program to inform future land exit program planning,<sup>105</sup> but CRS has not been able to locate additional information about the program.

### ***2008—Ongoing: Air Carrier Information Sharing***

Since 2008, under the Advanced Passenger Information System (APIS) program, air and sea carriers are required to provide CBP with electronic copies of passenger and crew manifests prior to the departure of all international flights and voyages to or from the United States. For air carriers, such data must be provided prior to securing aircraft doors. CBP vets inbound passenger manifests against terrorist watchlist data, and CBP adds passenger arrival and departure data to the ADIS biographic database. According to DHS officials, air carrier compliance with APIS requirements has been close to 100% since 2010, and analysis of ADIS records allows DHS to identify air travelers who may have overstayed their visas (also see “Overstay Analysis”).<sup>106</sup>

While DHS apparently views the APIS program as a viable system for tracking air and sea exits, the system may be seen as not meeting the entry-exit system’s legislative requirements in at least three ways. First, although air and sea carriers review passengers’ passports prior to issuing a boarding pass, APIS does not include a mechanism to authenticate biometric data (i.e., APIS only collects biographic data). Second, relatedly, the APIS system is not designed to reliably insure that the same individual who checks in for a flight or voyage actually boards the aircraft or vessel. Third, although APIS provides CBP with electronic passenger manifest lists, the manifests are generated by carrier agents during the check-in process; such “manual” data may be less secure than data collected directly from travelers’ passports (i.e., “machine-readable” data).<sup>107</sup>

### ***2012—Ongoing: U.S.-Canada Information Sharing***

On February 4, 2011, President Obama and Canadian Prime Minister Harper signed a joint declaration describing their shared visions for a common approach to perimeter security and economic competitiveness: the Beyond the Border agreement.<sup>108</sup> Among other provisions, the agreement calls for the two countries to develop an integrated entry-exit system so that the record of a land entry into one country establishes an exit record from the other. The first phase of the program ran from September 2012 – January 2013, and included the exchange of biographic records for third country nationals and permanent residents (i.e., for persons other than U.S. or

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(...continued)

*Temporary Lower-Skilled Workers: Current Policy and Related Issues*, by Andorra Bruno.

<sup>104</sup> GAO-10-13, p. 19.

<sup>105</sup> GAO, *Overstay Enforcement: Additional Mechanisms for Collecting, Assessing, and Sharing Data Could Strengthen DHS’s Efforts but Would Have Costs*, GAO-11-411, April 2011, p. 11.

<sup>106</sup> DHS briefing for CRS, April 3, 2013.

<sup>107</sup> The Senate-passed Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744) would require air carriers to collect machine readable exit data from departing passengers. Some have argued that a machine readable system would be more secure. For example, in the wake of the Boston Marathon bombing, some people hypothesized that the manual input of passenger name information contributed to alleged bomber Tamerlan Tsarnaev’s ability, after previously being investigated by the FBI, to travel back and forth to Russia without triggering additional scrutiny, though it appears that his travel did generate a “hit” against certain passenger name checks.

<sup>108</sup> For a fuller discussion, see CRS Report 96-397, *Canada-U.S. Relations*.

Canadian citizens) at four designated POEs. Canada was able to reconcile 94.5% of U.S. entries (i.e., Canadian exits) with Canadian immigration databases, and the United States was able to reconcile 97.4% of Canadian entries.<sup>109</sup> Based on these results, the countries initiated phase 2 of the pilot program in June 2013, expanding data collection to all automated POEs on the U.S.-Canada border.<sup>110</sup>

DHS apparently views the U.S.-Canadian integrated entry-exit system as a promising approach for collecting exit data at the northern border.<sup>111</sup> Under the current agreement, such information sharing will be limited to biographic data. DHS' ability to treat Canadian entry data as a reliable record of U.S. exits depends on both the organizational capacity of the Canada Border Services Agency (CBSA), and on a high level of trust and collaboration between CBSA and CBP.

## Overstay Analysis

Within DHS, U.S. Immigration and Customs Enforcement's (ICE's) Overstay Analysis Unit identifies potential visa overstayers by matching ADIS arrival and departure records. ICE's Counterterrorism and Criminal Exploitation Unit (CTCEU) prioritizes certain overstay leads for further investigation. According to GAO's analysis of DHS data, DHS's enhanced biographic exit program reviewed a backlog of 1.6 million potential overstay records in 2011. About half of these cases (863,000) were found to have departed the United States or to have adjusted status. Out of the remaining records, along with 82,000 additional cases identified by CTCEU (i.e., a total of 839,000 records), DHS prioritized 1,901 (0.2% of overstayers; 0.1% of all cases initially reviewed) as possible national security or public safety risks. Further investigation of these high priority cases found that 1,013 individuals had departed the United States or adjusted to a lawful migration status, 9 individuals were arrested, and 481 individuals were the subject of ongoing ICE enforcement efforts as of March 2013, among other outcomes.<sup>112</sup>

The GAO also determined that about 1.2 million ADIS arrival records could not be matched to departure data, and raised questions about the quality of DHS's overstay data.<sup>113</sup> Moreover, DHS and its predecessor agency have not provided Congress with statutorily required reports on visa overstays since 1994, though then-DHS Secretary Janet Napolitano testified in February 2013 that the department would report to Congress by the end of the year.<sup>114</sup>

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<sup>109</sup> Canada Border Services Agency (CBSA) and DHS, "Entry/Exit Information System Phase I Joint Canada-United States Report," May 8, 2013.

<sup>110</sup> CBSA, "Entry Exit Initiative – Phase II Privacy Impact Assessment (PIA) Executive Summary," June 28, 2013. It is not clear of the two countries have entered into Phase III of the agreement.

<sup>111</sup> DHS briefing for CRS, April 3, 2013; also see Testimony of DHS Assistant Secretary David Heyman, U.S. Congress, House Committee on Judiciary, *Implementation of an Entry-Exit System: Still Waiting After All These Years*, 113<sup>th</sup> Cong., 1<sup>st</sup> sess., November 13, 2013. Hereafter: Heyman Testimony, 2013.

<sup>112</sup> GAO, *Overstay Enforcement: Additional Actions Needed to Assess DHS's Data and Improve Planning for a Biometric Air Exit Program*, GAO-13-683, July 2013, pp. 12-14.

<sup>113</sup> Ibid., pp. 16-18.

<sup>114</sup> Testimony of DHS Secretary Janet Napolitano, U.S. Congress, Senate Committee on the Judiciary, *Comprehensive Immigration Reform*, 113<sup>th</sup> Cong., 1<sup>st</sup> sess., February 13, 2013. Hereafter: Napolitano testimony, 2013.

## Issues for Congress

### Screening for Infectious diseases at POEs<sup>115</sup>

News of humans infected with Ebola in West Africa has heightened concerns about the health screening of people arriving in the United States. Under current law, foreign nationals not already legally residing in the United States who wish to come to the United States generally must obtain a visa and submit to an inspection to be admitted.<sup>116</sup> They must first meet a set of criteria specified in the Immigration and Nationality Act (INA) that determine whether they are eligible for admission. Moreover, they must not be deemed inadmissible according to specified grounds in the INA. One of the reasons why a foreign national might be deemed inadmissible is on health-related grounds.<sup>117</sup>

From an immigration standpoint, an outbreak of an infectious disease places substantial procedural and resource pressures on CBP, which is charged with screening all travelers at land, sea, and air ports of entry for admission. CBP works in conjunction with the Centers for Disease Control and Prevention (CDC) in HHS to monitor travelers for health-related risks and attempt to contain any diseases that may be spread by travelers coming from abroad.

The CDC is the lead agency charged with protection against communicable diseases and is responsible for providing the technical instructions to CBP officers. CDC officials are not present at the border on a day-to-day basis, but there are quarantine stations located in a number of international airports and near a few land ports of entry. However, these stations constitute a small fraction of the 329 ports of entry operated by CBP. Even fully staffed quarantine stations are not in a position to perform routine health screening on all passengers crossing the border as a standard operating procedure.

Rather than staffing all the POEs, the CDC, through their Division of Global Migration and Quarantine (DGMQ),<sup>118</sup> trains CBP inspectors to watch for ill persons and items of public health concern. The CBP Inspector's Field Manual states that CBP officers are responsible for observing all travelers for obvious signs and symptoms of quarantinable and communicable diseases, such as (1) fever, which could be detected by a flushed complexion, shivering, or profuse sweating; (2) jaundice (unusual yellowing of skin and eyes); (3) respiratory problems, such as severe cough or difficulty breathing; (4) bleeding from the eyes, nose, gums, or ears or from wounds; and (5)

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<sup>115</sup> Except as otherwise noted, this section is based on CRS Report R40570, *Immigration Policies and Issues on Health-Related Grounds for Exclusion*.

<sup>116</sup> Authorities to except or to waive visa requirements are specified in law, such as the broad parole authority of the Attorney General under §212(d)(5) of the Immigration and Nationality Act (INA) and the specific authority of the Visa Waiver Program in §217 of the INA.

<sup>117</sup> Other grounds for exclusion include criminal history; security and terrorist concerns; public charge (e.g., indigence); seeking to work without proper labor certification; illegal entry and immigration law violations; ineligible for citizenship; and aliens previously removed. For more information, see CRS Report RL32256, *Visa Policy: Roles of the Departments of State and Homeland Security*, by Ruth Ellen Wasem.

<sup>118</sup> See CDC, Division of Global Migration and Quarantine, <http://www.cdc.gov/ncecid/dgmq/>. In addition to non-regulatory activities, DGMQ has regulatory authority to prevent the introduction, transmission, and interstate spread of communicable diseases into the United States and its territories.

unexplained weakness or paralysis.<sup>119</sup> However, CBP officers are not medically trained or qualified to physically examine or diagnose illness among arriving travelers.<sup>120</sup>

The CDC also approves the physicians used at the POEs, and tests are performed in consultation with and in accordance with CDC guidance. CDC officials are to be stationed at the border during immigration emergencies and other periods when public health may be threatened.<sup>121</sup>

In the current context of the Ebola outbreak in West Africa, the Administration has established new screening procedures at five airports<sup>122</sup> and requires all persons whose travel originated in Guinea, Liberia, and Sierra Leone to enter the United States through these five airports.<sup>123</sup> The airports were selected because reportedly they represent more than 94% of the travelers coming from those three countries. When passengers arrive whose travel originated in one of the aforementioned countries—including U.S. citizens—they are escorted to a separate area for additional screening. The travelers fill out an extensive questionnaire, and have their temperature taken. Staff from the CDC is present at these airports to assist with the screening. Travelers without febrile illness or symptoms of Ebola will be monitored two times a day by state and local health departments for 21 days from their departure from West Africa.<sup>124</sup> These travelers are also given a kit that contains a tracking log, a pictorial description of Ebola symptoms, a thermometer, and a wallet card with information on whom to contact if they have symptoms that can be presented to a health care provider if necessary. Those that have a fever or have symptoms consistent with Ebola will be immediately isolated.<sup>125</sup>

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<sup>119</sup> U.S. Department of Homeland Security, *Inspector's Field Manual*, Chapter 17, Section 9, Washington, DC, March 2006.

<sup>120</sup> In addition to the signs and symptoms of quarantinable and communicable diseases listed above, a person is considered to be ill in terms of foreign quarantine regulations when symptoms meet the following criteria: (1) temperature of 100 degrees Fahrenheit or greater which is accompanied by one or more of the following: rash, jaundice, or glandular swelling, or which has persisted for two days or more, and (2) diarrhea severe enough to interfere with normal activity or work. *Ibid.*

<sup>121</sup> Through an interagency agreement between the Department of Health and Human Services and the Department of Homeland Security, the Division of Immigration Health Services (DIHS) provides healthcare to undocumented migrants in the custody of Immigration and Customs Enforcement (ICE) residing in Service Processing Centers (SPC) and Contract Detention Facilities (CDF). DIHS, however, plays virtually no role in regard to inspection of travelers or screening of legal immigrants and nonimmigrants. For more information on DIHS, see archived CRS Report RL34556, *Health Care for Noncitizens in Immigration Detention*, by Alison Siskin.

<sup>122</sup> The Airports are: John F Kennedy Airport in New York, Dulles outside of Washington D.C., Newark N.J., Chicago O'Hare Airport, and Hartsfield in Atlanta. The new screening procedures began at John F. Kennedy Airport on October 13, 2014, and were implemented at the other four airports on October 16, 2014. Centers for Disease Control and Prevention and Department of Homeland Security Office of Public Affairs, "Enhanced Ebola Screening to Start at Five U.S. Airports for All People Entering U.S. for Ebola-Affected Countries," press release, October 8, 2014.

<sup>123</sup> The requirement to enter through one of the five airports began on October 22, 2014. Department of Homeland Security, "Statement by Secretary Johnson on Travel Restrictions and Protective Measures to Prevent the Spread of Ebola to the United States," press release, October 21, 2014.

<sup>124</sup> State and local authorities will require travelers to report the following information twice daily: their temperature and the presence or absence of other Ebola symptoms such as headache, joint and muscle aches, weakness, diarrhea, vomiting, stomach pain, lack of appetite, or abnormal bleeding; and their intent to travel in-state or out-of-state. If the traveler does not report in, state or local public health officials will take immediate steps to locate the individual. In the six states (New York, Pennsylvania, Maryland, Virginia, New Jersey, and Georgia), where approximately 70% of incoming travelers are headed, monitoring began on Monday, October 27, 2014. Centers for Disease Control and Prevention, "CDC Announces Active Post-Arrival Monitoring for Travelers from Impacted Countries," press release, October 22, 2014, <http://www.cdc.gov/media/releases/2014/p1022-post-arrival-monitoring.html>.

<sup>125</sup> Alison Siskin, Specialist in Immigration Policy, authored this segment.

## Entry-Exit System: Issues for Congress

The completion of a more comprehensive entry-exit system has been a persistent subject of congressional concern. As discussed elsewhere, two limitations of the current system are that most people entering the United States by land POEs only provide biographic data (i.e., do not provide biometric data), and that DHS may not have a fully reliable system for overstay analysis (see “Entry-Exit System: Implementation”). DHS reportedly has made progress with respect to real-time overstay analysis, but did not publish estimated overstay rates that had been expected in 2013.<sup>126</sup> In addition, even when DHS identifies potential visa overstayers in its dataset, the department has limited ability to track down and remove such overstayers.<sup>127</sup>

Arguably, the biggest questions about the entry-exit system concern the collection of exit data. No exit data are collected from persons leaving through southern border land ports; and data collection at other ports is limited to biographic data, is not always based on machine-readable data, and relies on information sharing with Canada and with air and sea carriers. DHS reportedly believes that the biographic information sharing generally meets its needs for purposes of exit tracking at an acceptable cost,<sup>128</sup> and CBP has indicated, for purposes of immigration screening, that “[w]hile biometric information is growing in importance, the vast majority of data available for use at the POEs is biographical.”<sup>129</sup> At the same time, DHS has also argued that strengthening biographic data collection is a necessary precursor to biometric data collection, and views a biographic system as a desirable long-term goal for the entry-exit system.<sup>130</sup> Members of Congress concerned with exit tracking may focus on the following questions:

- Are *biographic* data adequate for entry-exit tracking, or should *biometric* exit data collection be viewed as a priority?
- If biographic data are adequate, would an upgrade to *machine-readable* biographic data represent an improvement over the status quo?
- Is *information-sharing* using data provided by airlines and by Canada an acceptable model for exit data, or should DHS collect exit data directly?
- If information-sharing is acceptable, can a similar model be implemented on the *U.S.-Mexico border*, or does the Southern border require a different approach?
- If information-sharing is not acceptable, what *additional infrastructure and personnel* are required (and at what cost) for CBP to collect universal exit data?

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<sup>126</sup> Napolitano testimony, 2013.

<sup>127</sup> ICE’s main program to apprehend at-large removable aliens in the United States is the National Fugitive Operations Program (NFOP), which mainly focuses on at-large criminal aliens and fugitive aliens, including but not limited to high-priority visa overstayers. The NFOP consisted of 129 fugitive operations teams as of July 2013, and was responsible for 37,371 arrests in FY2012. See CRS Report R42057, *Interior Immigration Enforcement: Programs Targeting Criminal Aliens*.

<sup>128</sup> Heyman Testimony, 2013.

<sup>129</sup> CBP, Secure Borders, Safe Travel, Legal Trade: Fiscal Year 2009-2014 Strategic Plan, CBP, Washington, DC, 2009, p. 15.

<sup>130</sup> See for example Testimony of CBP Deputy Assistant Commissioner John Wagner, U.S. Congress, House Committee on Oversight and Government Affairs, Subcommittee on National Security, *Border Security Oversight, Part III: Border Crossing Cards and B1/B2 Visas*, 113<sup>th</sup> Cong., 1<sup>st</sup> sess., November 14, 2013.

Several bills in the 113<sup>th</sup> Congress include provisions related to exit data collection. The Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744), for example, would require carriers to collect electronic machine-readable biographic data from departing air passengers, and would make the implementation of this system one of the “triggers” for the complete implementation of the bill’s legalization provisions for certain unauthorized immigrants. The bill would require DHS, within two years of enactment, to establish a *biometric* exit system at the ten U.S. airports with the greatest volume of international air travel.<sup>131</sup> S. 744 also would require DHS to place 90% of aliens identified as visa overstays in removal proceedings or to otherwise resolve their cases, though the bill would not direct new funding or programs to follow-up such cases.<sup>132</sup> The Border Security Results Act of 2013 (H.R. 1417), as reported by the House Homeland Security Committee, would require DHS, within 180 days, to submit a plan to Congress either to immediately complete a biometric entry-exit system, or to implement an alternative program within two years.<sup>133</sup> And the Strengthen and Fortify Enforcement Act (H.R. 2278), as ordered reported by the House Judiciary Committee, would require the complete implementation of the biometric entry-exit system at all POEs within two years.

## Illegal Migration through Ports of Entry

Discussions of immigration control and border security often focus on unauthorized flows between ports of entry; but unauthorized immigrants also enter through ports of entry, either illegally or by overstaying a nonimmigrant visa. Visa overstayers enter legally on temporary (nonimmigrant) visas but fail to depart before the visa expires. Unauthorized immigrants enter through ports of entry by using fraudulent documents (including counterfeit or altered documents, and legitimate documents that do not belong to them) or by evading inspection, for example by being hidden inside a vehicle.

A potentially important question for Congress, particularly in light of the ongoing debate about immigration reform, is *how much unauthorized immigration occurs through POEs*? A 2006 study estimated that 40-50% of unauthorized immigrants in the country at the time were visa overstayers, and this study remains the most recent reliable public estimate.<sup>134</sup> In addition, interviews conducted with current and former unauthorized migrants in 2009 found that one out of four illegal entrants from Mexico had entered illegally through a port, either hidden in a vehicle or using borrowed or fraudulent documents, and that aliens attempting illegal entry through a POE were half as likely to be apprehended as those crossing between the ports.<sup>135</sup>

DHS has not published an estimate of the total number of visa overstayers in the United States or of the rate of illegal immigration through POEs, though the department reportedly plans to report

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<sup>131</sup> For a fuller discussion, see CRS Report R43097, *Comprehensive Immigration Reform in the 113<sup>th</sup> Congress: Major Provisions in Senate-Passed S. 744*.

<sup>132</sup> S. 744 §1201.

<sup>133</sup> For a fuller discussion, see CRS Report R43320, *Immigration Legislation and Issues in the 113<sup>th</sup> Congress*.

<sup>134</sup> Pew Hispanic Center, “Fact Sheet: Modes of Entry for the Unauthorized Migrant Population,” Pew Hispanic Center, Washington, DC, May 22, 2006. Also see CRS Report RS22446, *Nonimmigrant Overstays: Brief Synthesis of the Issue*.

<sup>135</sup> Jonathan Hicken, Mollie Cohen, and Jorge Narvaez, “Double Jeopardy: How U.S. Enforcement Policies Shape Tunkaseno Migration,” in *Mexican Migration and the U.S. Economic Crisis*, ed. Wayne A. Cornelius, David FitzGerald, Pedro Lewin Fischer, and Leah Muse-Orlinoff (La Jolla, CA: University of California, San Diego Center for Comparative Immigration Studies, 2010), pp.60-61 and CRS communication with the authors.

on visa overstayers, as noted elsewhere.<sup>136</sup> The department reportedly does *not* have plans to produce an estimate of illegal flows through POEs, and the COMPEX program is not currently designed to produce such an estimate (see “Random Compliance Examination (COMPEX) Program”). The program likely could be modified—primarily by increasing sample size—to produce such an estimate if Congress viewed such modifications as a priority, though CBP reportedly does not support such a change.<sup>137</sup>

Recent border security bills have targeted a greater share of resources to enforcement between ports of entry than to inspections and enforcement at POEs (see “Port of Entry Infrastructure and Personnel”). Some legislation in the 113<sup>th</sup> Congress focused on enforcement between the ports. For example, S. 744 would require DHS to develop a strategy to achieve “effective control” of Border Patrol sectors between ports of entry, but does not establish goals or metrics for enforcement at the ports. On the other hand, the Border Security Results Act of 2013 (H.R. 1417), as reported by the House Homeland Security Committee, would establish POE enforcement metrics, though it would not authorize new enforcement measures.

## Port of Entry Infrastructure and Personnel

One potential strategy for speeding migration flows while also enhancing border security is to add POE personnel and infrastructure. For any given volume of incoming travelers, both the flow rate (or “service level”) *and* the time spent on inspections are a positive function of the number of CBP officers on duty and the number of active travel lanes.<sup>138</sup> Conversely, according to a 2008 GAO report, infrastructure weaknesses increased the risk that vehicles could enter the United States without inspection; and staffing shortages contributed to morale problems, fatigue, lack of backup support, and safety issues, “increasing the potential that terrorists, inadmissible travelers, and illicit good could enter the country.”<sup>139</sup> GAO revisited these concerns in 2011 and reported that DHS was taking steps to address GAO’s recommendations regarding staffing and infrastructure, but that CBP faced challenges in developing POE performance metrics.<sup>140</sup> CBP’s Workload staffing model identifies a need for 3,811 additional CBP officers at POEs in FY2014,<sup>141</sup> and the Administration’s FY2014 budget proposal included a request for 3,477 additional officers.<sup>142</sup>

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<sup>136</sup> Napolitano testimony, 2013.

<sup>137</sup> According to CBP Office of Congressional Affairs (communication with CRS, December 30, 2013), CBP believes that developing a reliable estimate of unauthorized inflows at POEs would require substantially increasing the COMPEX sample size and would have a direct negative impact on secondary delays and wait times. The department told CRS that the necessary expansion in officer time, training costs, and technology devoted to COMPEX inspections would be cost and time prohibitive at many busy ports, and would be counterproductive to the mission of the agency.

<sup>138</sup> A similar argument can be made about the relationship among POE infrastructure and personnel, trade facilitation, and security; see CRS Report R43014, *U.S. Customs and Border Protection: Trade Facilitation, Enforcement, and Security*. The benefits of adding infrastructure and personnel may be greatest when such increases coincide, in order to maintain an effective ratio of agents per lane.

<sup>139</sup> GAO, *Border Security: Despite Progress, Weaknesses in Traveler Inspections Exist at Our Nations Ports of Entry*, GAO-08-329T, January 3, 2008, pp. 7-9.

<sup>140</sup> GAO, *Border Security: DHS Progress and Challenges in Securing the U.S. Southwest and Northern Borders*, GAO-11-508T, March 30, 2011, pp. 5-6.

<sup>141</sup> CBP Office of Congressional Affairs, January 8, 2014.

<sup>142</sup> DHS, CBP Salaries and Expenses Congressional Budget Justification, FY2014, p. 18.

To some extent, the Office of Field Operations (OFO) competes for resources with CBP's Border Patrol and with U.S. Immigration and Customs Enforcement (ICE).<sup>143</sup> The Border Patrol has grown about three times faster than OFO in the post-9/11 period.<sup>144</sup> Similarly, S. 744, would direct CBP to more than double the number of Border Patrol agents on the southwest border, while only authorizing a 16% increase in OFO officers.<sup>145</sup> Other bills in the 113<sup>th</sup> Congress would augment POE staffing, however.<sup>146</sup>

Recent fiscal pressures have been a barrier to POE personnel increases. As mentioned, during the FY2014 budget process, the Administration proposed to hire 3,477 additional CBP officers (about half through increased appropriations and half through fee increases), but Congress approved a slower personnel growth, with half the proposed funding.<sup>147</sup> Congress also authorized a pilot program in the FY2013 appropriations bill that permitted CBP to enter into public-private partnerships (PPPs) with certain localities and permitted the private sector to fund improvements in border facilities and port services, including by funding additional CBP officers and underwriting overtime hours.<sup>148</sup> In its FY2014 budget, the Administration proposed expanding the pilot program by permitting CBP to accept donations to expand port operations. Approving the Administration's request, Congress extended the pilot program in the FY2014 DHS appropriations bill.<sup>149</sup> The current pilot program permits CBP to accept donations to expand port operations, among other things.<sup>150</sup>

## Trusted Traveler Programs: Issues for Congress

As noted elsewhere, one of CBP's primary tools for risk management at POEs is the use of trusted traveler programs, including Global Entry, NEXUS, and SENTRI (see "Trusted Traveler Programs").<sup>151</sup> Trusted traveler programs are designed to facilitate legal flows by allowing low-risk, known travelers to be exempted from certain screening and inspections *and also* to enhance security by allowing CBP officers to focus greater attention on higher-risk flows. The benefits of

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<sup>143</sup> CBP's Office of Field Operations is responsible for enforcement at ports of entry (POEs); the Border Patrol is responsible for enforcement between POEs; and Immigration and Customs Enforcement is responsible for immigration enforcement within the United States and for customs-related investigations.

<sup>144</sup> According to the Congressional Research Service's (CRS) analysis of CBP data, CBP officer staffing on the Southwest border increased 35% between 2004 (the first year for which data are available) and 2013, from 4,771 to 6,444 officers. During the same period, Border Patrol personnel on the Southwest border increased 94%, from 9,506 to 18,462 agents. For a fuller discussion, see CRS General Distribution memorandum, "Immigration Enforcement Since 2006," by Marc R. Rosenblum, available to congressional clients from the author.

<sup>145</sup> Section 1102 of S. 744 would require DHS to deploy 38,405 Border Patrol agents to the Southwest border, up from about 18,500 in FY2013, and would require CBP to add 3,500 OFO officers nationwide, up from about 21,800 in FY2013.

<sup>146</sup> See for example, the Putting Our Resources Toward Security (PORTS) Act (H.R. 583), the Cross-Border Trade Enhancement act of 2013 (H.R. 1108/S. 178), and the Emergency Port of Entry Personnel and Infrastructure Funding Act of 2013 (H.R. 3753/S. 1812).

<sup>147</sup> For a fuller discussion, see CRS Report R43147, *Department of Homeland Security: FY2014 Appropriations*.

<sup>148</sup> See section 560 of the Consolidated and Further Continuing Appropriations Act, FY2013 (P.L. 113-6, Div. D). The FY2013 pilot program permitted five such partnerships in Dallas, TX, Houston, TX, and Miami, FL and land POEs in El Paso, TX and Laredo/McAllen, TX.

<sup>149</sup> See section 559 of the Consolidated Appropriations Act, FY2014 (P.L. 113-76, Div. F).

<sup>150</sup> *Ibid.*

<sup>151</sup> CBP also uses trusted trade programs as a risk management tool for commercial flows; see CRS Report R43014, *U.S. Customs and Border Protection: Trade Facilitation, Enforcement, and Security*.

trusted traveler programs should increase with scale because moving more travelers into expedited lanes speeds overall processing times, and fewer unknown travelers mitigates the “needle in the haystack” challenge of enforcement at POEs. Thus, legislation in the 113<sup>th</sup> Congress would promote membership in trusted trade programs.<sup>152</sup>

Congress and CBP confront certain obstacles to expanding trusted traveler programs, however. One of the main incentives CBP can offer trusted travelers is to reduce the likelihood of secondary inspections; but doing so may encourage *mala fide* actors to enroll in these programs to game the system. In addition, at land POEs, travelers only benefit from an expedited inspections process if they are also able to take advantage of dedicated NEXUS or SENTRI lanes (i.e., so that the entire queue is subject to expedited processing). But CBP has limited capacity to add and extend dedicated lanes because many ports are located in urban areas with limited space for expansion,<sup>153</sup> though the agency has addressed this problem, to some extent, by using “active lane management” systems that adjust lane assignments based on real-time demand.

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<sup>152</sup> See for example the Jobs Originated through Launching Travel (JOLT) Act of 2013 (H.R. 1354).

<sup>153</sup> See U.S. Department of Commerce, *Draft Report: Improving Economic Outcomes by Reducing Border Delays, Facilitating the Vital Flow of Commercial Traffic Across the US-Mexican Border*, Washington, DC, 2008.

## Appendix. Entry-Exit System Legislation

Congress has enacted the following legislation concerning an entry-exit system:

- Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA, P.L. 104-208, Div. C). Section 110 required the Attorney General, within two years of enactment (i.e., by September 30, 1998), to develop an automated entry and exit control system that would collect records of alien arrivals and departures and allow the Attorney General through online searches to match such arrivals and departures and thereby identify nonimmigrant aliens who remain in the United States beyond the periods of their visas (i.e., visa overstayers). The bill also required the Attorney General to annually report to Congress on the number of visa overstayers and their countries of origin.
- P.L. 105-259 and P.L. 105-277. These appropriations acts amended §110 of IIRIRA to extend the deadline for implementing the entry-exit system to October 15, 1998 for airports and seaports and to March 30, 2001 for land POEs.
- Immigration and Naturalization Service Data Management Improvement Act (P.L. 106-215). The act amended IIRIRA §110 to describe the entry-exit system in greater detail; clarified that the system's mandate did not impose new documentary requirements on travelers to the United States; and imposed new deadlines of December 2003 for implementation of the entry-exit system at all U.S. airports and seaports, December 2004 for implementation of the system at the 50 busiest land POEs, and December 2005 for making data from the system available to immigration officers at all POEs. The act also authorized the Attorney General to make entry-exit system data available to other law enforcement officials for law enforcement purposes.
- Visa Waiver Permanent Program Act (P.L. 106-396). Section 205 amended INA §217 to require the Attorney General (separate and apart from IIRIRA §110) to develop and implement a fully automated entry and exit control system to collect arrival and departure records for aliens traveling in and out of the United States under the Visa Waiver Program (also see “Visa Waiver Program”).
- Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act, P.L. 107-56). Section 411 encouraged the Attorney General to implement the IIRIRA entry-exit system “with all deliberate speed.” The act directed the Attorney General, in the development of the system, to focus on the utilization of biometric technology and tamper-resistant documents; and it required that the system interface with law enforcement databases to identify individuals who pose a threat to national security. In addition, Section 403 required the Departments of Justice and State, working through the National Institute of Standards and Technology (NIST), to develop and certify a technology standard that can be used to verify the identity and check the backgrounds of persons applying for a U.S. visa or seeking admission at a POE.
- Enhanced Border Security and Visa Entry Reform Act of 2001 (EBSVERA, P.L. 107-173). Section 302 required the Attorney General and DOS to use the technology standard required to be developed under the PATRIOT Act at POEs

and at consular posts abroad; to establish an arrival and departure database; and to make all alien admissibility security databases interoperable.

- Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA, P.L. 108-458). Among other provisions, Section 7208 reiterated Congress's finding that a biometric entry-exit system should be implemented as expeditiously as possible and required DHS to develop and report on a plan to accelerate the full implementation of such a system. The section also clarified that the entry-exit system shall include a requirement for the collection of biometric data for all categories of individuals required to provide such data, regardless of the POE. And it imposed a two year deadline for the development of a fully interoperable data system among relevant agencies within DOS, DHS, and DOJ.
- Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act, P.L. 110-53). Section 711 amended INA §217 (as previously amended by P.L. 106-396) to require DHS within one year to establish an exit system to record the departure of all air travelers participating in the Visa Waiver Program.

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